

(16,952.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 367.

JOHN W. BLYTHE AND HENRY T. BLYTHE,
APPELLANTS,

vs.

FLORENCE BLYTHE HINCKLEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE
NORTHERN DISTRICT OF CALIFORNIA.

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1 In the Circuit Court of the United States in and for the Northern District of California.

JOHN W. BLYTHE and HENRY T. BLYTHE, Plaintiffs,

vs.

FLORENCE BLYTHE HINCKLEY, FREDERICK W. HINCKLEY, Her Husband, and The Blythe Company, a Corporation, Defendants.

Complaint to Quiet Title.

Now come John Wesley Blythe and Henry Thomas Blythe, the plaintiffs above named, by S. W. & E. B. Holladay, their attorneys, and for cause of action allege as follows:

First. That plaintiff John W. Blythe is a resident and citizen of the State of Kentucky, and plaintiff Henry T. Blythe is a resident and citizen of the State of Arkansas.

Second. That defendants are citizens, and each of them is a citizen, of the State of California.

Third. That plaintiffs are the owners, as tenants in common with each other, of the lands hereinafter mentioned.

Fourth. That said lands are bounded and described as follows, namely: That parcel of real estate situated in the city and county of San Francisco, State of California, beginning on the southerly line of Geary street, distant thirty feet and five inches westerly from the westerly line of Kearny street, thence southerly on a line at right angles to said southerly line of Geary street fifty feet and three-fourths of one inch to the northwesterly line of Market street; thence southwestwardly along the last-named line three hundred and eighty-four feet and ten inches, more or less, to the northerly line of O'Farrell street; thence westerly along the last-named line forty feet one and a half inches, more or less, to the easterly line of Dupont street; thence northerly along the last-named line two hundred and five feet; thence at right angles easterly sixty feet; thence at right angles northerly twenty feet; thence at right angles westerly twenty feet; thence at right angles northerly fifty feet to the southerly line of Geary street; thence easterly along the last-named line one hundred and fifty-five feet six inches; thence at right angles southerly seventy-four feet and six inches; thence at right angles westerly thirty feet; thence at right angles southerly three feet; thence at right angles easterly fifty feet and six inches; thence at right angles northerly seventy-seven feet and six inches to the southerly line of Geary street, and thence easterly along the southerly line of Geary street one hundred and fifty-six feet and six inches, more or less, to the point of beginning, being a portion of the block of land bounded by Kearny, Market, Grant avenue, and Geary street, and also all those various tracts and parcels of land in the county of San Diego, State of California, amounting in all to forty thousand acres of land, more or less, and standing

3 of record in the county recorder's office of said San Diego county, in the name of Thomas H. Blythe, now deceased.

Fifth. That said lands are of the value of three millions of dollars and upwards.

Sixth. That said defendants, Florence Blythe Hinckley, and the defendant The Blythe Company, a corporation, and the said defendant, F. W. Hinckley, husband of said Florence Blythe Hinckley, and each of them, claim that they have or own adversely to plaintiffs some estate, title, or interest in said lands; but plaintiffs allege that said claims of defendants are false and groundless and without warrant of law, and their claims to said lands are a cloud upon plaintiffs' title thereto.

Wherefore plaintiffs pray that said defendants be required to produce and set forth in this action by what rights and upon what ground they claim right or title to said land as against plaintiffs, and that it be finally adjudged herein that defendants have not and that neither of them has any right or title to said lands or any part thereof, and that plaintiffs' title thereto be adjudged good and valid as against defendants and each of them, and for such other and further order, judgment, or relief as may be just, and that defendants, until the trial thereof, be restrained and enjoined from meddling or interfering with said lands or the rents and profits thereof, and for costs.

S. W. & E. B. HOLLADAY,
Attorneys for Plaintiffs.

(Endorsed :) Complaint to quiet title. Filed December 3rd, 1895.
W. J. Costigan, clerk, by W. B. Beaizley, deputy clerk.

4 In the Circuit Court of the United States in and for the Northern District of California.

JOHN W. BLYTHE and HENRY T. BLYTHE, Plaintiffs,	}
vs.	
FLORENCE BLYTHE HINCKLEY, FREDERICK W. HINCKLEY, Her Husband, and The Blythe Company, a Corporation, Defendants.	

Amended Complaint.

Now come John Wesley Blythe and Henry Thomas Blythe, the plaintiffs above named, by S. W. & E. B. Holladay, their attorneys, and, by leave of the court first had and obtained, file this their amended complaint, and for cause of action against defendants allege as follows:

First. That plaintiff John W. Blythe is a resident and citizen of the State of Kentucky, and plaintiff Henry T. Blythe is a resident and citizen of the State of Arkansas.

Second. That defendant The Blythe Company is a corporation organized and existing under the laws of the State of California and having its office and principal place of business at the city and county of San Francisco, in said State.

5 Third. That each of defendants is a citizen of the State of California, and is a resident of and now resides within the northern district of said State of California.

Fourth. That plaintiffs are the owners as tenants in common with each other of the lands and all thereof hereinafter mentioned, described, or referred to.

Fifth. That one piece or parcel of said lands is bounded and described, as follows, namely:

Beginning at a point on the southerly line of Geary street distant thirty (30) feet and five (5) inches westerly from the westerly line of Kearny street, thence southerly on a line at right angles to the said southerly line of Geary street fifty (50) feet and three-fourths ($\frac{3}{4}$) of one inch, more or less, to the northwesterly line of Market street; thence southwesterly along the said northwesterly line of Market street three hundred and eighty-four (384) feet and ten and seven-eighths ($10\frac{7}{8}$) inches, more or less, to the northerly line of O'Farrell street; thence westerly along the said northerly line of O'Farrell street forty (40) feet and one and one-half ($1\frac{1}{2}$) inches, more or less, to the easterly line of Dupont street; thence northerly along the said easterly line of Dupont street two hundred and five (205) feet; thence at right angles easterly sixty (60) feet; thence at right angles northerly twenty (20) feet; thence at right angles westerly twenty (20) feet; thence at right angles northerly fifty (50) feet to the said southerly line of Geary street; thence easterly along the said southerly line of Geary street one hundred and thirty-five (135) feet and six (6) inches; thence at right angles southerly seventy-four (74) feet and six (6) inches; thence at right angles

6 westerly thirty (30) feet; thence at right angles southerly three (3) feet; thence at right angles easterly fifty (50) feet and six (6) inches; thence at right angles northerly seventy-seven (77) feet and six (6) inches to the said southerly line of Geary street, and thence easterly along the said southerly line of Geary street one hundred and fifty-six (156) feet and six (6) inches, more or less, to the point of beginning, being a portion of the block of land bounded by Kearny, Market, Dupont (Grant avenue), and Geary streets, all in the city and county of San Francisco, State of California; that other parcels of said lands are all those various tracts and parcels of land situate in the county of San Diego, State of California, and standing of record in the county recorder's office of said San Diego county, in the name of Thomas H. Blythe, now deceased.

Sixth. That said lands, the tract thereof first described, is of the value of three millions of dollars and upwards.

Seventh. That said defendants, Florence Blythe Hinckley, and the defendant The Blythe Company, a corporation, and the said defendant, Frederick W. Hinckley, husband of said Florence Blythe Hinckley, and each of them, claim that they have or own some estate, title, or interest in said lands, and all thereof, adversely to plaintiffs, but plaintiffs allege that said claims of defendants, and each of them, are, and that each of such claims is, false and groundless and without warrant of law.

7 Eighth. That at the time of the commencement of this suit neither one of the parties was in possession of said lands nor any part thereof.

Wherefore plaintiffs pray that it be adjudged herein that plaintiffs are the owners of said lands and all thereof, and that defendants have not, and that neither of them has, any right, title, or interest in or to said lands or any part thereof adverse to the title of plaintiffs thereto; that plaintiffs be granted such other and further order, judgment, or relief as may be just, and for costs.

S. W. & E. B. HOLLADAY,
Attorneys for Plaintiff.

(Endorsed:) Amended complaint. Filed December 12th, 1895. W. J. Costigan, clerk, by W. B. Beazley, deputy clerk.

8 Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California. In Equity.

The President of the United States of America to Florence Blythe Hinckley, Frederick W. Hinckley, her husband, and the Blythe Company, a corporation, Greeting:

You are hereby commanded that you be and appear in said circuit court of the United States aforesaid, at the court-room, in San Francisco, on the second day of November, A. D. 1896, to answer a bill of complaint exhibited against you in said court by John W. Blythe, who is a citizen of the State of Kentucky, and Henry T. Blythe, who is a citizen of the State of Arkansas, and to do and receive what the said court shall have considered in that behalf; and this you are not to omit under the penalty of five thousand dollars.

Witness the Honorably Melville W. Fuller, Chief Justice of the United States, this 16th day of September, in the year of
[SEAL.] our Lord one thousand eight hundred and ninety-six, and of our Independence the 121st.

W. J. COSTIGAN, *Clerk.*

Memorandum Pursuant to Rule 12, Rules of Practice for the Courts of Equity of the United States.

You are hereby required to enter your appearance in the above suit on or before the first Monday of November next, at the clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken *pro confesso*.

W. J. COSTIGAN, *Clerk.*

(Endorsed.)

UNITED STATES MARSHAL'S OFFICE,
NORTHERN DISTRICT OF CALIFORNIA.

I hereby certify that I received the within writ on the 28th day of September, 1896, and personally served the same, on the 28th day of September, 1896, on Florence Blythe Hinckley and Frederick W.

Hinckley, her husband, by delivering to and leaving with Florence Blythe Hinckley and Florence Blythe Hinckley, the wife of Frederick W. Hinckley, an adult person, who is a member in the family of Frederick W. Hinckley, said defendant named therein, at the city and county of San Francisco, in said district, an attested copy thereof, at the dwelling-house or usual place of abode of said Florence Blythe Hinckley, one of said defendants herein.

San Francisco, Oct. 1st, 1896.

BARRY BALDWIN,
U. S. Marshal,
By T. J. GALLAGHER, Deputy.

Subpoena ad respondendum. Filed October 2d, 1896. W. J. Costigan, clerk.

10 In the Circuit Court of the United States in and for the Northern District of California.

JOHN W. BLYTHE and HENRY T. BLYTHE, Complain-	}	No. 12144.
ants,		
vs.		
FLORENCE BLYTHE HINCKLEY, FREDERICK	}	
W. J. C., W. Hinckley, Her Husband, The Blythe		
clerk. Company, a Corporation, [and Boswell		
M. Blythe],* Defendants.		

Second Amended and Supplemental Bill in Equity.

To the judges of the circuit court of the United States for the northern district of California:

John W. Blythe, of Fulton, and citizen of the State of Kentucky, and Henry T. Blythe, of Blythedale, and a citizen of the State of Arkansas, by leave of court first had and obtained, file this their second amended and supplemental bill in equity against Florence Blythe Hinckley and Frederick W. Hinckley, her husband, of San Francisco, and citizens of the State of California, and the Blythe

Company, a corporation organized and existing under the laws of and a citizen of the State of California [“and Boswell M. Blythe, of Downey, and a citizen of the State of California”]*; and thereupon your orators complain and say—

11 That on the 3rd day of December, 1895, they filed their original bill herein against all these defendants except Boswell M. Blythe; which bill was in substance as follows:

That your orators were citizens and residents of the State of Kentucky and Arkansas respectively; that defendants each were then citizens of the State of California; that complainants were then the owners as tenants in common with each other of the lands therein described, which are the same lands hereinafter described; that said

[* Words and figures enclosed in brackets erased in copy.]

lands were of the value of \$3,000,000 and upwards; that said defendants claimed to own adversely to complainants some estate, title, or interest in said land, but that said claims of said defendants were and are groundless and without warrant of law, and their claims to said lands were a cloud upon complainants' title thereto; and these complainants prayed that said defendants be required to set forth in this action by what rights and upon what grounds their said claims rested, and that it be finally adjudged herein that defendants nor either of them have any right or title to said lands or any part thereof, and that complainants' title thereto be adjudged good and valid as against defendants and each of them, and for such other judgment or relief as might be just, and that defendants, until the trial hereof, be restrained and enjoined from meddling or interfering with said lands or the rents and profits thereof, and for costs.

That on the 12th day of December, 1895, your orators, by leave of court first had and obtained, duly filed herein their amended bill, which amended bill differed from the original bill only in this, that

12 it alleged that the defendant The Blythe Company was a corporation organized and existing under the laws of the State of California and having its office and principal place of business at the city and county of San Francisco, in said State, and that each of defendants is a citizen of the State of California and is a resident of and now resides within the northern district of said State of California, and that at the time of the commencement of this suit neither one of the parties was in possession of said lands nor any part thereof. In other respects said amended bill was in substance the same as the original bill.

And by way of supplement to the original and amended bill, your orators say that the said Boswell M. Blythe is a citizen of the
the southern district of

W. J. C., State of California, residing at Downey, in a said State; clerk.

and your orators further say that the said Boswell M. Blythe is one of the heirs-at-law of said Thomas H.

Blythe, deceased, mentioned in the original and amended bills herein, and is entitled to have some share of the estate of said Thomas H. Blythe adjudged and decreed to him; that by reason of his citizenship he cannot join your orators as complainants but as the said Boswell M. Blythe resides out of and beyond the jurisdiction of this court your orators state the facts concerning him

in this bill; a [but being a proper party, your orators therefore make him a defendant]*, to the end that his rights and interests may be protected and preserved by your honors upon the final decree; and your orators say that complainant John W. Blythe is a citizen and resident of the State of Kentucky, and complainant Henry T. Blythe is a citizen and resident of the State of Arkansas, and all the defendants named in this bill are respectively residents and citizens of the State of California.

13 And your orators say that Thomas H. Blythe died intestate in the city and county of San Francisco, State of California, on the 4th day of April, 1883, being at and before the time of his death a citizen of the United States and of the State of

[* Words enclosed in brackets erased in copy.]

California and a resident of the city and county of San Francisco; that at and before the time of his death he was the owner in fee and seized and possessed of all the following-described real property, situated in the city and county of San Francisco, State of California, bounded and described as follows:

Beginning at a point on the southerly line of Geary street distant thirty feet and five inches westerly from the westerly line of Kearny street, thence southerly on a line at right angles to the said southerly line of Geary street fifty feet and three-fourths of one inch, more or less, to the northwesterly line of Market street; thence southwesterly along the said northwesterly line of Market street three hundred and eighty-four feet and ten and seven-eighths inches, more or less, to the northerly line of O'Farrell street; thence westerly along the said northerly line of O'Farrell street forty feet and one and one-half inches, more or less, to the easterly line of Dupont street; thence northerly along the said easterly line of Dupont street two hundred and five feet; thence at right angles easterly sixty feet; thence at right angles northerly twenty feet; thence at right angles westerly twenty feet; thence at right angles northerly fifty feet to the said southerly line of Geary street; thence easterly along the said southerly line of Geary street one hundred and thirty-five feet and six
 14 inches; thence at right angles southerly seventy-four feet and six inches; thence at right angles westerly thirty feet; thence at right angles southerly three feet; thence at right angles easterly fifty feet and six inches; thence at right angles northerly seventy-seven feet and six inches to the said southerly line of Geary street, and thence easterly along the said southerly line of Geary street one hundred and fifty-six feet and six inches, more or less, to the point of beginning, being a portion of the block of land bounded by Kearny, Market, Dupont (Grant avenue), and Geary streets, all in the city and county of San Francisco, State of California.

And your orators further say that they and the said Boswell M. Blythe were and are the next of kin and heirs-at-law of said Thomas H. Blythe, deceased, and said John W. Blythe is the assignee of Elizabeth Shelton and William S. Blythe, other next of kin and heirs-at-law of said Thomas H. Blythe, deceased, and as such assignee he, said John W. Blythe, owns the interests to which they would have been entitled in the estate of said Thomas H. Blythe, deceased, and as such your orators were and are entitled to take and have by succession and they did take by succession the estate of said Thomas H. Blythe, deceased, and as such they are the owners in fee of the real property above described and entitled to the possession thereof.

And your orators say that defendant Florence was born in England, the bastard child of an unmarried woman. At the time of her birth her mother was a resident of England and a subject of Victoria, Queen of Great Britain and Ireland; that said Florence was born a subject of Victoria, Queen of Great Britain and
 15 Ireland, and she remained in England at all times until after the death of said Thomas H. Blythe.

That one Joseph James Ashcroft and Julia, his wife, both

English subjects, domiciled and residing in England, after the birth of said Florence and prior to the death of Blythe, took said Florence, while still a young child, under the age of ten years, into their family and publicly held her out as their child.

That after the death of said Thomas H. Blythe, as hereinbefore alleged, the public administrator of the city and county of San Francisco took charge of the estate of said Blythe and entered upon the administration of the same.

That in the year 1883 the said Florence, for the first time, left England and came to San Francisco, she being then an infant about ten years old, who had never before been out of England, and who was then and there ineligible to become a citizen of the United States, and who was when she arrived in California a non-resident alien.

That the laws in force in the State of California in the year 1883, when the said Thomas H. Blythe died, relating to the rights of foreigners and aliens to take real estate by succession as heirs-at-law of a deceased citizen of the State of California were the treaty of 1794, between His Britannic Majesty and the United States, and the naturalization laws of the United States and section 17 of article I of the constitution of California, adopted in the — 1879, which said section 17 of article I was made mandatory and prohibitory by section 22 of article I of said constitution. When said constitution

was adopted, and long prior thereto, there were in the Civil Code of California certain sections, namely, sections 671, 672, and 1404, relating to said subject, which last-named sections were and are contrary to and inconsistent with and in violation of said section 17 of article I of said constitution, and were by the provisions of said section 17 and section 22 of article I annulled and abrogated.

And your orators further say that there were at and for some time before the death of said Thomas H. Blythe certain laws in force in said State, to wit, sections 230 and 1387 of the Civil Code of California, providing for the adoption and legitimation and institution of heirship of illegitimate children; that said section 230 originated with the adoption of said Code; that said section 1387 has been substantially in force in the State of California since the year 1850, and had been many times construed and applied or held not to apply by the supreme court of California before the adoption of the said Civil Code, and that the construction of said law by the State supreme court became a rule of property in said State, and so remained and continued to be a rule of property from the year 1854 until it was attempted to be changed and abrogated by a decision of said supreme court, made in the year 1894.

That there was not at any time during the life of said Thomas H. Blythe any law in force in England under or by the force of which the said Blythe could have legitimated the said Florence or made her his heir-at-law, nor was there at any time during the life of said Blythe any law in force in England under or by the force of which he could have released or absolved the said Florence of and from her allegiance

17 to her sovereign, Queen Victoria, or, without bringingsaid Florence into California, changed her status from that of a subject of

England to that of a *bona fide* resident of the State of California; that after the said Florence first came to San Francisco one James Crisp Perry, who was then and there a subject of the Queen of Great Britain, was appointed by said superior court of the city and county of San Francisco guardian of said Florence, and thereafter, as such guardian, he commenced a proceeding in said superior court in the name of said Florence to have the court ascertain, adjudge, and determine the heirship to the said Thomas H. Blythe and the ownership of his estate, and, in substance, that she, said Florence, was the daughter and the sole heir of said Thomas H. Blythe under and by virtue of said sections 230 and 1387 of said Civil Code or under and by virtue of one or the other of said sections, and also by virtue thereof to have the said court adjudge and decree that the said Florence was the sole heir-at-law of the said Thomas H. Blythe and entitled to inherit his estate; that your orators appeared in said action or proceedings and filed their answer [and

W. J. C., cross complaint]* therein denying and contesting the clerk. right and title of said Florence and claiming for themselves to be heirs of said Blythe; that thereafter

such proceedings were had in said court in the said cause that it was for the first time made to appear plainly to the court upon the record that said Florence was an illegitimate child; that she was born in England, and that neither she nor her alleged mother, nor the mother nor father of the alleged mother, had ever been within the United States or eligible to become

18 citizens thereof until after the death of the said Thomas H. Blythe; and your orators in that behalf allege that when it was so made plainly to appear to said court that the said Florence was a non-resident alien, and had never been a *bona fide* resident of the State of California until after the death of said Thomas H. Blythe and descent cast, it was the duty of said court to dismiss the petition or complaint, or both, of the said Florence, in so far as the title and descent of the above-described real estate was involved or affected for want of jurisdiction in said court to adjudge or decree that said Florence was capable of inheriting said real estate as an heir-at-law of said Thomas H. Blythe.

Your orators further say that in the said proceeding, wherein the said Florence was petitioner and plaintiff, it was at the trial thereof attempted to be proven by her and in her behalf that the said Thomas H. Blythe, after the birth of the said Florence, and before his death, and while he was living in the State of California, and while the said Florence was living in England, as aforesaid, attempted to legitimate the said Florence by adoption under said section 230 of the Civil Code, or to institute her as his heir under said section 1387 of said Code, and your orators say that the parties went to trial, and the said superior court, without jurisdiction so to do, decided, in substance and effect, that said Thomas H. Blythe had in his lifetime adopted

[* Words and figures enclosed in brackets erased in copy.]

and legitimated the said Florence; that from said judgment your orators appealed to the State supreme court, and in that court the cause was argued, and by a divided court it was, without any jurisdiction so to do, in substance and effect, decided that the said Thomas H. Blythe had not adopted or legitimated the said Florence under or in conformity with said section 230 of the Civil Code, but that he had constituted her his heir under and pursuant to the provisions of section 1387 of said Civil Code.

And in that behalf your orators say that neither the said superior court nor the said supreme court considered, adjudged, or construed, in making its decision, the said section 17 of article I and said section 22 of article I of the constitution of the State of California; nor were the rights of your orators under those sections adjudged or determined by either of said courts or by its decision.

And in that behalf your orators say that said last decision so made by a divided court was and is contrary to and in violation of the constitution of the State of California, and was and is contrary to and in direct conflict with numerous former decisions of said supreme court, which former decisions had long before established a rule of property in said State, which rule had excluded aliens and foreigners who occupied the same or similar status as did said Florence, from inheriting real estate in the State of California.

And in that behalf your orators further say that they are informed and believe, and upon their information and belief say, that they are not precluded by the said conflicting decisions of the State court, nor by anything contained in the record of the proceedings upon which said last decision was made, from prosecuting this their action in this court, nor is this court precluded from entertaining jurisdiction of this action and deciding it upon its merits, nor is said last decision binding or obligatory as authority or otherwise upon this court.

And your orators further say that heretofore, to wit, on June 18, 1894, said Florence, calling herself Florence Blythe, filed in said superior court, in the matter of the estate of said Thomas H. Blythe, deceased, her petition for distribution, praying for an order of said court distributing to her the share of said estate to which she claimed to be entitled, to wit, the whole of said estate, embracing the real property first above described, to which she alleged herself to be entitled only as sole heir-at-law and sole next of kin to said Thomas H. Blythe, deceased.

That in her said petition it was made plainly to appear to said court that said Florence, the petitioner, was a non-resident alien, and was not and had never been a *bona fide* resident of the State of California until after the death of said Thomas H. Blythe and descent cast, and your orators say that it was the duty of said court to dismiss the said petition for distribution of said Florence, in so far as the title and descent of the above-described real estate was involved or affected, for want of jurisdiction in said court to adjudge or decree that said Florence was capable of inheriting said real estate as heir-at-law of said Thomas H. Blythe, or to distribute said estate to her.

That your orators answered said petition for distribution, and thereby took issue upon all the material averments thereof, and therein claimed said estate as heirs of said Blythe.

21 That afterwards the court, sitting in probate, without right or jurisdiction so to do, heard said petition for distribution and afterwards, on October 26, 1894, said court went through the idle form of granting a decree of distribution, and on that day a document which falsely purported to be a decree of distribution of nearly all the property of said estate of Thomas H. Blythe to said Florence, embracing all of the real property above described, was signed by the judge of said court and filed by the clerk and on the next day thereafter was recorded in the minute book of said court.

And your orators say that said pretended decree of distribution was and is null and void for want of jurisdiction in said court to make the same.

And your orators say that said Florence was born on or about the 18th day of December, 1873, and became of age, under the laws of California, on or about the 18th day of December, 1891.

And your orators say that on the 21st day of September, 1892, said Florence was married to defendant Frederick W. Hinckley and has taken the name of Florence Blythe Hinckley and she is sued herein under said name.

And your orators further say that heretofore and since the filing of the original bill herein, to wit, on January 2d, 1896, said Florence, calling herself Florence Blythe Hinckley, filed in said superior court in the matter of the estate of Thomas H. Blythe, deceased, her petition for final distribution to her of said estate, wherein and whereby she prayed for an order of said court distributing to her the
22 residue of said estate then remaining in the hands of the public administrator, amounting to the sum of \$89,842.94, the same and the whole thereof being the rents accrued from the real property aforesaid, to which she alleged herself to be entitled only as the sole heir-at-law and sole next of kin to said Thomas H. Blythe, deceased.

That in her said petition it was made plainly to appear to said court that said Florence, the petitioner, was born and continued to be a non-resident alien until after the death of said Blythe, and was not and had never been a *bona fide* resident of the State of California until after the death of said Thomas H. Blythe and descent east; and your orators say that it was the duty of said court to dismiss said petition for final distribution to said Florence, in so far as the above-described real estate and said rents were involved or affected, for want of jurisdiction in said court to adjudge or decree that said Florence was capable of inheriting said real estate as heir-at-law of said Thomas H. Blythe, deceased, or to distribute said estate to her.

That notice of said petition was given to your orators, who were notified and invited to come into court and show why said petition should not be granted.

That, in obedience and response to said notice, your orators did on January 16, 1896, file in said court their answer, wherein and

whereby they denied the right of the said Florence to have said rents distributed to her, and claimed that they were the heirs and next of kin of said Thomas H. Blythe, deceased, and entitled to said rents.

23 That afterwards, on the 16th day of January, 1896, said court sitting in probate, without right or jurisdiction so to do, heard said petition for final distribution and wrongfully struck from the files the answer and opposition so theretofore filed by your orators, and when your orators arose and attempted to object to and to show cause why said petition should not be granted, said court refused to permit your orators to be in anywise heard.

And afterwards, on January 18th, 1896, said court went through the idle form of granting a decree of final distribution, and on that day a document which falsely purported to be a decree of final distribution, distributing to said Florence all the residue of said estate, based upon said petition last aforesaid, was signed by the judge of said court and filed by the clerk, and the same was thereafter recorded in the minute book of said court.

And your orators say that said pretended decree of final distribution was and is null and void for want of jurisdiction in said court to make the same.

And your orators further say that at the date of filing the original bill herein neither party hereto was in possession of the land hereinbefore described, but the same was in the hands and possession of the public administrator of the city and county of San Francisco, State of California.

But since the filing of said bill, to wit, December 4, 1895, said Florence has secured possession of said real property and the whole thereof through said pretended judgment and decrees aforesaid, and without any other or further right than as above set forth, and she is now in the possession of the same.

24 That said real property is all of it built upon, being covered with stores and tenements which are much used and in great demand as places of business, and which are all occupied by tenants and bring in a monthly rental of about twelve thousand dollars, which said Florence receives each month without any just and lawful right so to do.

That said Florence has no property; that she is and will continue to be insolvent and largely indebted, to wit, in the sum of \$500,000 and upwards, and wholly unable to account for and restore said rents and income received and which she will continue to receive, to said estate or to your orators.

And your orators say that the real property the subject of this action is of the value of upwards of three millions of dollars.

And defendants claim some right or title to said land and property adverse to your orators, which claim, except as to the said nominal defendant, Boswell M. Blythe, is false and groundless and a cloud upon your orators' title.

Wherefore, in consideration of the premises and inasmuch as your orators are remediless at law and can have no adequate relief save in a court of equity, where matters of this and the like nature are

properly cognizable and relievable, and to the end that the respondents may appear and answer all and singular the matters and things hereinbefore in this their amended and supplemental bill complained of, but without oath to their several answers, your

25 orators expressly waiving the oath of each of the respondents to his or her answer hereto, your orators pray your honors to order, adjudge, and decree that your orators and the assigns of your orators were, at the time of the death of the said Thomas H. Blythe, and now are, the heirs-at-law of the said Thomas H. Blythe, and as such heirs did inherit and were and are entitled to inherit the said above-described real estate from said Thomas H. Blythe.

That neither of the defendants to this bill, excepting said nominal defendant, Boswell M. Blythe, now have or ever had any right, title, or interest in or to the said above-described real estate as heirs-at-law of the said Thomas H. Blythe or otherwise.

That the title of your orators to said real estate be quieted in and by the decree of your honors, and that they be let into possession thereof.

That as to the said Florence Blythe Hinckley and the said Frederick W. Hinckley, her husband, an account of the rents and profits which have been received or which may hereafter be received up to the final hearing by the said Florence Blythe Hinckley or of any one claiming under her be taken, and that upon the coming in of the report of the value thereof and the confirmation of said report be adjudged and decreed to your orators.

And your orators pray for such other and further and particular relief as to your honors may seem meet and proper; that your honors appoint a receiver herein to take possession of the said above real estate, and to hold the same pending this action, 26 and to collect the rents and profits of said real estate, and to manage the same under such particular or general orders as your honors may give and direct.

And your orators pray for general relief and for their costs.

S. W. & E. B. HOLLADAY,
Solicitors for Complainants.

L. D. McKISICK,
Counsel for Complainants.

CHANDLER, HOLLADAY & CONROY,
Of Counsel for Complainants.

(Endorsed:) Received a copy of the within second amended and supplemental bill this 14th day of January, 1897. Wm. H. H. Hart, solicitors for defendants Hinckley. Geo. W. Towle, Jr., att'y for defendant The Blythe Company. Second amended and supplemental bill in equity. Filed Jan. 14th, 1897. W. J. Costigan, clerk, by W. B. Beaizley, dep. clerk.

27 In the Circuit Court of the United States in and for the Northern District of California.

JOHN W. BLYTHE and HENRY T. BLYTHE,
Complainants,

vs.

FLORENCE BLYTHE HINCKLEY, FREDERICK
W. Hinckley, Her Husband, The Blythe
Company, a Corporation, and Boswell
M. Blythe, Defendants.

No. 12144. In Equity.

Notice of Motion for an Order of Court Dismissing Suit.

To said complainants and S. W. & E. B. Holladay, solicitors for said complainants, and to the defendant The Blythe Company and to George W. Towle, Jr., its solicitor :

You and each of you are hereby notified that said defendant, Florence Blythe Hinckley, will move the court on Monday, March 1st, 1897, at 11 o'clock a. m., or as soon thereafter as counsel can be heard, at the court-room of said court, in the Appraisers' building, in said city and county of San Francisco, State of California, for an order of said honorable court dismissing said suit, and which motion will be made upon the following grounds, to wit :

1st. That, as appears from the second amended and supplemental bill of complaint of complainants filed in the above-entitled
28 suit, this honorable court has no jurisdiction of the matters and things in the alleged cause of action in said second amended and supplemental bill of complaint stated.

2d. That, as appears from the said second amended and supplemental bill of complaint of complainants filed in the above-entitled suit, all the parties on one side of the controversy involved in this suit are not citizens of different States, nor of a different State, from all those upon the other side of said controversy.

3d. That in said second amended and supplemental bill of complaint the citizenship of the parties thereto is averred, and it appears therefrom that Boswell M. Blythe, who is made a party thereto and is named as a defendant therein, is a citizen of the same State of which this defendant Florence Blythe Hinckley is a citizen, to wit, of the State of California ; and it further appears from said second amended and supplemental bill of complaint that said Boswell M. Blythe is interested wholly on the same side of the controversy in this suit with the complainants herein, and is to be arranged and regarded as one of the complainants in this suit in determining the question of jurisdiction, and his citizenship being that of the same State as that of the defendant Florence Blythe Hinckley, this honorable court has not jurisdiction of this suit.

Upon the hearing of said motion this defendant will rely on the papers, pleadings, files, records, and proceedings on file and of record in said suit, and particularly upon the said second amended
29 and supplemental bill of complaint filed herein, and this notice of motion.

Wherefore said defendant prays that said suit be dismissed.

WM. H. H. HART,

Solicitor for the Defendant Florence Blythe Hinckley.

GARBER, BOALT & BISHOP &

W. W. FOOTE,

Of Counsel for the Defendant Florence Blythe Hinckley.

(Endorsed :) Service of the within by copy admitted this 15th day of February, 1897. S. W. & E. B. Holladay, solicitors for complainants. Notice of motion for an order of court dismissing suit. Filed February 15, 1897. W. J. Costigan, clerk, by W. B. Beazley deputy clerk.

30 In the Circuit Court of the United States, Northern District of California.

JOHN W. BLYTHE ET AL.

vs.

FLORENCE BLYTHE HINCKLEY ET AL.

} 12144.

Order Dismissing Action as to Defendant The Blythe Co.

Now, this day, the complainants in the above entitled and numbered action having come into open court and moved the court to be allowed to dismiss their bill herein as to and against the Blythe Company, named as one of the defendants herein, and to discontinue this suit as to said defendant;

And it appearing that no decretal order or decree has been made herein affecting said defendant in any manner whatever—

It is ordered that said motion be granted, and it is adjudged and decreed that this action be discontinued as to and against The Blythe Company, defendant, on payment by complainants of said defendant's costs heretofore accruing.

Dated Feb. 26, 1897.

WM. W. MORROW,

District Judge.

(Endorsed :) Order discontinuing action as to The Blythe Co., defendant. Filed & entered Feb'y 26th, 1897. W. J. Costigan, clerk.

31 In the Circuit Court of the Northern District of California.

JOHN W. BLYTHE ET AL., Complainants,

vs.

FLORENCE BLYTHE HINCKLEY and BOSWELL M.

Blythe *et al.*, Defendants.

} No. 12144.

Order Amending Second Amended & Supplemental Bill & Dismissing Cause as to Boswell M. Blythe.

On motion, made this day, in open court, by the solicitors for complainants, for leave to strike out the name of Boswell M. Blythe

from the caption and title of the cause in the amended and supplemental bill filed herein on the 4th day of January, 1897, and for leave to amend said bill by striking out the words on lines 27 and 28 on page 1, "and Boswell M. Blythe, of Downey, and a citizen of the State of California;" and to amend said bill, line 15, page 3, by inserting after the words "Downey in" by adding and inserting the words "the southern district of" before the word "said," in line 15, page 3; and to amend said bill, line 22, page 3, by striking out after the word "bill" the words "but being a proper party, your orators therefore make him a defendant," line 23, and by inserting after the said word "defendant," line 23, page 3, and before the words "to the end," the following, "but as the said Boswell M. Blythe resides out of and beyond the jurisdiction of this court, your orators state the facts concerning him," and line 27, page 8, strike the words "and cross-complaint," and for leave to dismiss said amended and supplemental bill as to the said Boswell M. Blythe without prejudice--

The court, having heard and considered said motions, granted the same and each of them, and it is hereby ordered and directed that the clerk of this court amend the said bill by erasing and striking from the caption and title of the cause the name of Boswell M. Blythe, and by striking out and erasing the words "and Boswell M. Blythe, of Downey, and a citizen of the State of California," on lines 27 and 28, page 1, of the bill, by running his pen with red ink through said words, and that he add and insert after the words "Downey in," line 15, page 3, the words "the southern district of," and that he erase and strike out after the word "bill," line 22, page 3, the words "but, being a proper party, your orators therefore make him a defendant," by running his pen with red ink through said words, and that after the said word "defendant" and before the words "to the end," line 23, page 3, he insert the words following: "but as the said Boswell M. Blythe resides out of and beyond the jurisdiction of this court, your orators state the facts concerning him," and in line 27, page 8, strike out the words "and cross-complaint."

And it is further ordered that said amended and supplemental bill so amended as aforesaid be, and the same is hereby, dismissed as to and against the said Boswell M. Blythe without prejudice, and the clerk is hereby directed to enter an order on the minutes dismissing the bill without prejudice as to said Boswell M. Blythe and note the same on the rule docket of the court.

WM. W. MORROW, *Judge*.

Dated June 1st, 1897.

(Endorsed:) Amendments. Filed June 1st, 1897. W. J. Costigan, clerk.

33 In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.

JOHN W. BLYTHE ET AL., Complainants, }
vs. } No. 12144.
FLORENCE BLYTHE HINCKLEY ET AL. }

Opinion on Motion to Dismiss.

S. W. & E. B. Holladay, attorneys for complainants; L. D. McKisick and Jefferson Chandler, of counsel.

W. H. H. Hart, attorney for the defendant Florence Blythe Hinckley; Garber, Boalt & Bishop, W. W. Foote, Aylett R. Cotton, and Robert Y. Hayne, of counsel.

George W. Towle, Jr., attorney for the defendant The Blythe Company; E. S. Pillsbury and Lorenzo S. B. Sawyer, of counsel.

MORROW, *Circuit Judge*:

This is a motion to dismiss the action as it is set forth in the second amended and supplemental bill of complaint. The first ground of the motion is that it appears that the court has no jurisdiction of the matters and things alleged in the bill of complaint. A preliminary objection has been interposed to the consideration of the question of jurisdiction on this motion. The objection must be overruled. Section 5 of the act of March 3, 1875 (18 Stat., 472), imposes upon the circuit court the duty of dismissing a suit if it
34 appears at any time after it is brought, and before it is finally disposed of, that it does not really and substantially involve a controversy of which it may properly take cognizance (*Robinson v. Anderson*, 121 U. S., 522; *Morris v. Gilmer*, 129 U. S., 315).

The second amended and supplemental bill of complaint contains a recital of the proceedings in the superior court of the city and county of San Francisco with respect to the estate of Thomas H. Blythe, deceased. It alleges, among other things, that the defendant Florence Blythe Hinckley was born in England, the bastard child of an unmarried woman; that at the time of her birth her mother was a resident of England and a subject of Victoria, Queen of Great Britain and Ireland; that she remained in England at all times until the death of Thomas H. Blythe; that she came to California for the first time in 1883; that she was then an infant about ten years of age, ineligible to become a citizen of the United States, and when she arrived in California she was a non-resident alien; and, among other things, the bill alleges:

That after the death of said Thomas H. Blythe, as hereinbefore alleged, the public administrator of the city and county of San Francisco took charge of the estate of said Blythe and entered upon the administration of the same. * * *

That after the said Florence first came to San Francisco one James Crisp Perry, who was then and there a subject of the Queen of Great Britain, was appointed by said superior court of the city and

35 county of San Francisco guardian of said Florence, and thereafter, as such guardian, he commenced a proceeding in said superior court, in the name of said Florence, to have the court ascertain, adjudge, and determine the heirship to the said Thomas H. Blythe and the ownership of his estate, and in substance that she, said Florence, was the daughter and the sole heir of said Thomas H. Blythe under and by virtue of said sections 230 and 1387 of said Civil Code or under and by virtue of one or the other of said sections, and also by virtue thereof to have the said court adjudge and decree that the said Florence was the sole heir-at-law of the said Thomas H. Blythe and entitled to inherit his estate; that your orators appeared in said action or proceeding and filed their answer and cross-complaint therein, denying and contesting the right and title of said Florence and claiming for themselves to be heirs of said Blythe; that thereafter such proceedings were had in said court in the said cause that it was for the first time made to appear plainly to the court, upon the record, that said Florence was an illegitimate child, that she was born in England, and that neither she nor her alleged mother, nor the mother nor father of the alleged mother, had ever been within the United States or eligible to become citizens thereof until after the death of the said Thomas H. Blythe; and your orators in that behalf allege that when it was so made plainly to appear to said court that the said Florence was a non-resident alien and had never been a *bona fide* resident of the State of California until after the death of said Thomas H. Blythe and descent cast it was the duty of the court to dismiss the petition or complaint, or both, of the said
36 Florence, in so far as the title and descent of the above-described real estate was involved or affected, for want of jurisdiction in said court to adjudge or decree that said Florence was incapable of inheriting said real estate as an heir-at-law of said Thomas H. Blythe.

Your orators further say that in the said proceeding wherein the said Florence was petitioner and plaintiff it was at the trial thereof attempted to be proven by her and in her behalf that the said Thomas H. Blythe, after the birth of the said Florence and before his death, and while he was living in the State of California, and while the said Florence was living in England, as aforesaid, attempted to legitimate the said Florence by adoption under said section 230 of the Civil Code, or to institute her as his heir under said section 1387 of said code; and your orators say that the parties went to trial, and the said superior court, without jurisdiction so to do, decided in substance and effect that said Thomas H. Blythe had in his lifetime adopted and legitimated the said Florence; that from said judgment your orators appealed to the State supreme court, and in that court the cause was argued and by a divided court it was, without any jurisdiction so to do, in substance and effect decided that said Thomas H. Blythe had not adopted or legitimated the said Florence under or in conformity with said section 230 of the Civil Code, but that he had constituted her his heir under and pursuant to the provisions of section 1387 of said Civil Code.

And in that behalf your orators say that neither the said
37 superior nor the said supreme court considered, adjudged, or
construed in making its decision the said section 17 of article
I and said section 22 of article I of the constitution of the State of
California, nor were the rights of your orators under those sections
adjudged or determined by either of said courts or by its decision.

And in that behalf your orators say that said last decision made
by a divided court was and is contrary to and in violation of the
constitution of the State of California, and was and is contrary to
and in direct conflict with numerous former decisions of said su-
preme court, which former decisions had long before established a
rule of property in said State, which rule had excluded aliens and
foreigners who occupied the same or similar status as did said Flo-
rence, from inheriting real estate in the State of California.

And in that behalf your orators further say that they are informed
and believe, and upon their information and belief say, that they
are not precluded by the said conflicting decisions of the State court,
nor by anything contained in the record of the proceedings upon
which said last decision was made, from prosecuting this their action
in this court, nor is this court precluded from entertaining jurisdic-
tion of this action and deciding it upon its merits, nor is said last
decision binding or obligatory as authority or otherwise upon this
court.

And your orators further say that heretofore, to wit, on June 18,
1894, said Florence, calling herself Florence Blythe, filed in said
superior court, in the matter of the estate of said Thomas H.
38 Blythe, deceased, her petition for distribution praying for an
order of said court distributing to her the share of said estate
to which she claimed to be entitled, to wit, the whole of said estate,
embracing the real property first above described, to which she
alleged herself to be entitled only as sole heir-at-law and sole next
of kin to said Thomas H. Blythe, deceased.

That in her said petition it was made plainly to appear to said
court that said Florence, the petitioner, was a non-resident alien,
and was not and had never been a *bona fide* resident of the State of
California until after the death of said Thomas H. Blythe and de-
scendant, and your orators say that it was the duty of said court to
dismiss the said petition for distribution of said Florence in so far
as the title and descent of the above-described real estate was in-
volved or affected for want of jurisdiction in said court to adjudge
or decree that said Florence was capable of inheriting said real estate
as heir-at-law of said Thomas H. Blythe or to distribute said estate
to her.

That your orators answered said petition for distribution, and
thereby took issue upon all the material averments thereof, and
therein claimed said estate as heirs of said Blythe.

That afterwards the court, sitting in probate, without right or
jurisdiction so to do, heard said petition for distribution, and after-
wards, on October 26, 1894, said court went through the idle form
of granting a decree of distribution, and on that day a document,

39 which falsely purported to be a decree of distribution of nearly all the property of said estate of Thomas H. Blythe to said Florence, embracing all of the real property above described, was signed by the judge of said court and filed by the clerk, and on the next day thereafter was recorded in the minute book of said court.

And your orators say that said pretended decree of distribution was and is null and void for want of jurisdiction in said court to make the same. * * *

And your orators further say that heretofore and since the filing of the original bill herein, to wit, on January 2d, 1896, said Florence, calling herself Florence Blythe Hinckley, filed in said superior court, in the matter of the estate of Thomas H. Blythe, deceased, her petition for final distribution to her of said estate, wherein and whereby she prayed for an order of said court distributing to her the residue of said estate, then remaining in the hands of the public administrator, amounting to the sum of \$89,842.94, the same and the whole thereof being the rents accrued from the real property aforesaid, to which she alleged herself to be entitled only as the sole heir-at-law and sole next of kin to said Thomas H. Blythe, deceased.

That in her said petition it was made plainly to appear to said court that said Florence, the petitioner, was born and continued to be a non-resident alien until after the death of said Blythe, and was not and had never been a *bona fide* resident of the State of California until after the death of said Thomas H. Blythe and descent cast; and your orators say that it was the duty of said court to dismiss said petition for final distribution to said Florence in so far
40 as the above-described real estate and said rents were involved or affected for want of jurisdiction in said court to adjudge or decree that said Florence was capable of inheriting said real estate as heir-at-law of said Thomas H. Blythe, deceased, or to distribute said estate to her.

That notice of said petition was given to your orators, who were notified and invited to come into court and show why said petition should not be granted.

That in obedience and response to said notice your orators did on January 16, 1896, file in said court their answer, wherein and whereby they denied the right of the said Florence to have said rents distributed to her and claimed that they were the heirs and next of kin of said Thomas H. Blythe, deceased, and entitled to said rents.

That afterwards, on the 16th day of January, 1896, said court sitting in probate, without right or jurisdiction so to do, heard said petition for final distribution and wrongfully struck from the files the answer and opposition so theretofore filed by your orators, and when your orators arose and attempted to object to and to show cause why said petition should not be granted said court refused to permit your orators to be in anywise heard.

And afterwards, on January 18th, 1896, said court went through the idle form of granting a decree of final distribution, and on that day a document which falsely purported to be a decree of final dis-

tribution, distributing to said Florence all the residue of said estate, based upon said petition last aforesaid, was signed by the
41 judge of said court and filed by the clerk, and the same was thereafter recorded in the minute book of said court.

And your orators say that said pretended decree of final distribution was and is null and void for want of jurisdiction in said court to make the same.

And your orators further say that at the date of filing the original bill herein neither party hereto was in possession of the land hereinbefore described, but the same was in the hands and possession of the public administrator of the city and county of San Francisco, State of California.

But since the filing of said bill, to wit, December 4, 1895, said Florence has secured possession of said real property and the whole thereof, through said pretended judgment and decree aforesaid, and without any other or further right than as above set forth, and she is now in the possession of the same. * * *

It will be observed that the bill charges that the proceedings in the superior court of San Francisco and in the supreme court of the State respecting the right of the defendant Florence Blythe Hinckley to inherit the estate of Thomas H. Blythe, deceased, were without jurisdiction in either court to adjudge or determine. This charge of want of jurisdiction in the State court appears to be a conclusion drawn from the averments of the bill and must be disregarded unless the facts alleged are sufficient to support the charge. It is based primarily upon the alleged want of capacity on the part
42 of the defendant Florence Blythe Hinckley to inherit the estate of Thomas H. Blythe, by reason of the fact that she was an illegitimate child and an alien at the time of his death; but it is contended, further, that the State court, in adjudging that she had the capacity to inherit, destroyed a rule of property in the State after the estate had vested by descent in complainants. Upon this claim the complainants insist that they are entitled to maintain this action to recover their several interests in an estate in which they allege the defendants are in possession of under a void judgment.

The first inquiry is as to the jurisdiction of the State court to hear and determine the controversy as to the right of inheritance and the conclusive character of the judgment of that court between the same parties in the present action.

In the Broderick will case, 21 Wall., 503, a suit in equity was brought in the circuit court of the United States for the district of California by the alleged heirs-at-law of David C. Broderick to set aside the probate of his will and have the same declared a forgery and to recover the said estate, much of which consisted of lands in the city of San Francisco. Demurrers were interposed, and upon argument the bill was dismissed. An appeal was taken to the supreme court, where the decree was affirmed. In speaking of the jurisdiction of the probate courts the court said: "The public interest requires that the estates of deceased persons, being deprived of a master and subject to all manner of claims, should

at once devolve to a new and competent ownership, and consequently that there should be some convenient jurisdiction and mode of proceeding by which this devolution may be effected with the last chance of injustice and fraud, and that the result attained should be firm and perpetual. The courts invested with this jurisdiction should have ample powers both of process and investigation, and sufficient opportunity should be given to check and revise proceedings tainted with mistake, fraud, or illegality. These objects are generally accomplished by the constitution and powers which are given to the probate courts and the modes provided for reviewing their proceedings; and one of the principal reasons assigned by the equity courts for not entertaining bills on questions of probate is that the probate courts themselves have all the powers and machinery necessary to give full and adequate relief." After reviewing the authorities establishing the general rule that a court of equity will not interfere with probate proceedings, the court proceeds to consider the jurisdiction of the probate courts of California, and concludes with this observation: "In view of these provisions, it is difficult to conceive of a more complete and effective probate jurisdiction or one better calculated to attain the ends of justice and truth."

Under the present constitution of the State of California jurisdiction of all matters of probate is vested in the superior court, a court of general jurisdiction.

In *Simmons v. Saul*, 138 U. S., 439, a bill in equity was brought in the circuit court of the United States for the eastern district of Pennsylvania. The object of the bill was to charge the defendant as the former owner of a tract of land in Wisconsin, as the trustee for complainants with respect to said ownership, and have him account for the value of the lands, and for all the rents and profits received by him and his grantees, and for all loss and damage resulting to the property by reason of the cutting of timber thereon by the defendant and his grantee, and for any other loss occasioned by the defendant's acts.

The complainants were the collateral heirs of Robert M. Simmons who died unmarried and intestate in Louisiana about the year 1830. At the time of his death he was seized and possessed of an inchoate land claim in Louisiana for 640 acres, founded upon a purchase of a settlement right conferred by an act of Congress. For reasons involving no fault on the part of Robert M. Simmons or any of his heirs the claim remained unlocated and unsatisfied until Congress passed an act in 1858, under which the surveyor general of the district in which the claim was situated was authorized, upon satisfactory proofs, to issue to the claimants or his legal representatives a certificate of location for a quantity of land equal to that so confirmed and unsatisfied, and it was provided that this certificate might be located upon any of the public lands of the United States subject to sale at private entry, etc. By the law of Louisiana the heirs of a decedent become seized and possessed of his whole estate, both real and personal, immediately upon his death, subject only to their right to renounce said succession or to the right of creditors to re-

quire administration thereof in case of non-action of the heirs. In 1872 such action was taken in a parish court in Louisiana at the instance of a stranger to the estate that the judge of the court issued an order purporting to appoint an administrator of the estate of Robert M. Simmons, directing an inventory of the estate to be made and a sale of the property belonging thereto to pay debts. An inventory was returned and a sale of the land claim made in accordance with the order. The claim was sold for \$30, which sum was wholly used and expended in the payment of the costs and expenses of the pretended administration, no other debts than those created thereby existing or being shown to exist. This claim was thereupon presented to the surveyor general of Louisiana by the purchaser claiming to be the legal representative of Robert M. Simmons, and the surveyor general thereupon prepared certificates of location for the claim, and in the course of proceedings authorized by the act of Congress certain of the certificates were located upon lands in Wisconsin and a patent therefor issued by the United States in the name of Robert M. Simmons or his legal representative. By several mesne conveyances the lands in question passed to the defendant, who neglected to pay the taxes assessed thereon, and the lands were conveyed for the unpaid taxes; but while the defendant was in possession of the land he removed therefrom timber and other valuable products and sold the same for large sums of money and received large rents and profits from the lands, which it was the object of the bill to recover. All the proceedings in relation to the claim in suit, the cutting of the timber, and all other acts in anywise connected with the claim were done and had without the knowledge or the complainants or of any person interested in the claim. The bill alleged that the Louisiana court was without jurisdiction, and that its proceedings in the matter did not conform to the statute under the authority of which it assumed to act, and the prayer of the bill was that complainants might be adjudged and decreed to be the true legal representatives of Robert M. Simmons; that the proceedings in the parish court in relation to the sale of the land claims be adjudged null and void, and that an account be taken, etc.

The defendant demurred to the bill, the demurrer was sustained, and the bill dismissed. An appeal was taken to the Supreme Court, where the judgment of dismissal was affirmed. The questions discussed in the opinion of the court were the validity of the judgment of the parish court of Louisiana ordering the sale of the unlocated land claim, the legality of the sale and the fraud by which it was alleged the judgment was procured. The court reviews the authorities upon the questions involved in the case and arrives at the conclusion that the parish court had a clear and unquestionable jurisdiction of the intestate estate or succession of Robert M. Simmons; that whatever errors there were in the proceedings could have been corrected on appeal or avoided in a direct action of annulment, but could not be made the grounds on which the decree of the court could be collaterally assailed.

In *Little Rock Junction Railway Co. v. Burke*, 66 Fed., 83, the

complainant, claiming to be the owner by inheritance of a lot of land in the city of Little Rock, Arkansas, filed a bill of complaint against the Little Rock Junction railway to establish his title

thereto and to recover the premises from the possession
47 of the defendant. The bill averred in substance that the railway company was in possession of the land under a conveyance from one S., who claimed to have purchased the property at a sale for overdue taxes, which sale had been made in obedience to a decree of a State court of Arkansas in Pulaski county, having full chancery powers; that the title thus acquired by the railway company from S., its grantor, was unfounded and void for the reason that the court never, in fact, acquired jurisdiction over the complainant to condemn and sell the property for overdue taxes; that service of process was by publication, and that notice was not properly given. The defendant denied the material allegations of the bill touching the jurisdiction of the chancery court and averred that said court acquired full jurisdiction of the case and of all persons having any interest in the property. The defendants also pleaded that the case made by the bill of complaint was not a case of which the Federal circuit court, sitting in equity, could properly take cognizance. The circuit court rendered a decree in favor of the complainant whereby it adjudged that his title was not divested by the sale under the decree of the State court. On appeal to the circuit court of appeals, the decree of the circuit court was reversed and the cause remanded, with directions to the circuit court to vacate its decree and dismiss the bill of complaint without prejudice to the complainant's right to take such action in the State court as he might deem proper. Judge Thayer, speaking for the circuit court of appeals and referring to the testimony introduced in the circuit court relating to the publication of notice of the
suit in the State court, said "that the trial of the case

48 clearly resolved itself into a review of the proceedings of Pulaski chancery court for matters apparent on the face of the record." After pointing out the various proceedings that might have been taken by the complainant in the State court to correct the error of the chancery court, Judge Thayer said: "We think, therefore, that it may be accepted as a general rule, in the absence of any statutory provisions on the subject, that the proper forum in which to seek relief, otherwise than by an appeal or writ of error, against a judgment or decree which is alleged to be void on the face of the record, is in the court by which such judgment or decree was rendered, and that other courts of co-ordinate jurisdiction have no authority to grant relief in such cases. But, whatever may be the correct rule in this respect as between State courts of equal authority, it is manifestly true, we think, that, owing to the peculiar relations which exist between State and Federal courts of co-ordinate jurisdiction, the Federal circuit court ought not to review, modify, or annul a judgment or decree of a State court, unless such review is sought on a state of facts not disclosed by the record of the State court, which, for that reason, has not undergone judicial examination. The sufficiency of the service, whether by publication or

otherwise, to support a final adjudication, and every other matter apparent upon the face of the record, are supposed to have received due consideration by the court rendering a judgment or decree before the same was entered. Therefore, when a suit is instituted to nullify a decree for matters disclosed by the record, and for no other reason, the proceeding is not a new suit, but is essentially in the nature of an appeal from the original adjudication or a bill of review. The Federal courts should remit proceedings such as these to the judicial tribunal of the State which made the record that is to be reviewed or impeached."

Reference is then made to the fact that the bill had been brought to quiet complainant's title against the claims of the defendant, and that the prayer of the bill was that the complainant might be restored to the possession of the premises wrongfully withheld from him by the defendant, and that the bill was filed after the alleged void decree of the chancery court was fully executed and after the defendant had acquired a title thereunder. Commenting upon this feature of the case, the court does not find in it a sufficient reason for holding that the circuit court was authorized to review the proceedings of the chancery court and to afford relief on the ground that the complaint was without means of redress for the alleged wrong in the State court, by which the supposed void decree was rendered, the court holding that not only was the bill of review open to the complainant as a remedy, but the action of ejectment, and upon this point the court says: "Moreover, as the present action was brought and prosecuted upon the theory that the decree of the chancery court is utterly void when tried by the record, it follows that the remedy by ejectment was also open to the complainant, for no doctrine is better established than that a sale under a decree that was rendered without jurisdiction confers no title, and that such

a decree is open to impeachment in any collateral proceeding when the want of jurisdiction is apparent upon the face of the record" (citing *Galpin v. Page*, 18 Wall., 350; *Coit v. Haven*, 30 Conn., 190; *Adams v. Cowles*, 95 Mo., 501; 8 S. W., 711; *Frankel v. Satterfield* (Del. Super.), 19 Atl., 898; *Furgeson v. Jones* (Or.), 20 Pac., 842; *Black Judgm.*, secs. 278, 407, and cases there cited). Judge Sanborn concurred specially in the judgment of the circuit court of appeals on the ground that "a bill of equity cannot be maintained in the national courts to recover possession of real property in cases in which there is no impediment to an action of ejectment."

In *Barrow v. Hunton*, 99 U. S., 80, the Supreme Court draws a distinction between a suit to set aside a decree on evidence outside of the record establishing fraud in obtaining the decree and a proceeding to vacate a judgment for matters disclosed upon the face of the record. In that case Hunton had recovered a judgment by default in a State court of Louisiana. Subsequently the judgment debtor filed a petition in the State court praying for a decree to nullify the judgment on the ground that he had not been lawfully served with process. Hunton caused the proceedings to nullify the judgment to be removed to the circuit court of the United States,

where the question arose whether the Federal court could lawfully entertain jurisdiction of the proceedings. In discussing that question Mr. Justice Bradley, in delivering the opinion of the court, said: "The question presented with regard to the jurisdiction of the circuit court is whether the proceeding to procure (the) nullity of the former judgment in such a case as

51 the present is or is not in its nature a separate suit, or whether it is a supplementary proceeding, so connected with the original suit as to form an incident to it, and substantially a continuation of it. If the proceeding is merely tantamount to the common-law practice of moving to set aside a judgment for irregularity, or to a writ of error, or to a bill of review or appeal, it would belong to the latter category and the United States court could not properly entertain jurisdiction of the case; otherwise the circuit courts of the United States would become invested with power to control the proceedings in the State courts, or would have appellate jurisdiction over them in all cases where the parties are citizens of different States. Such a result would be totally inadmissible. On the other hand, if the proceedings are tantamount to a bill in equity to set aside a decree for fraud in the obtaining thereof, then they constitute an original and independent proceeding, and according to the doctrine laid down in *Gaines v. Fuentes*, 92 U. S., 10, the case might be within the cognizance of the Federal courts. The distinction between the two classes of cases may be somewhat nice, but it may be affirmed to exist. In the one class there would be a mere revision of errors and irregularities, or of the legality and correctness of the judgments and decrees of the State courts, and in the other class the investigation of a new case arising upon new facts, although having relation to the validity of an actual judgment or decree, or of the party's right to claim any benefit by reason thereof."

52 These cases clearly establish the doctrine that the courts of the United States will not take jurisdiction of a case to correct an error appearing on the face of the record in a judgment rendered in a State court, nor will it take jurisdiction of a case the object of which is to set aside a judgment of a State court void upon its face. Now, if we examine the present bill, we find that the latter object is its substantial scope and purpose, and to accomplish this object there is set forth, with great particularity, the record and proceedings in the superior and supreme courts of the State in a controversy between the same parties, concerning the same subject-matter, together with references to the treaty of 1794 between Great Britain and the United States, sections of the constitution of the State and sections of the Civil Code of California, relating to the rights of foreigners and aliens to take real estate by succession as heirs-at-law of deceased citizens of California, and the question arises whether, upon that record, the contention of the complainants takes the case out of the general rule limiting the jurisdiction of the circuit court to interfere in such cases. This contention, fully stated, is: First, that the State court had no jurisdiction to award the estate of Thomas H. Blythe to a non-resident alien, who was ineli-

gible to become a naturalized citizen of the United States; second, that under a settled rule of property in existence in this State at the death of Thomas H. Blythe, and descent cast, the complainants were his heirs-at-law and the title to the real estate vested in them *eo instante* on the death of Blythe, and no court could afterwards divest that title and vest it in another; third, that this

53 court is not precluded by the decision of the State supreme court in 1892 in the case of *Blythe v. Ayres* (96 Cal., 552).

The claim that the superior court of the State had no jurisdiction to award the estate of Thomas H. Blythe to the defendant Florence Blythe Hinckley, because at his death she was a non-resident alien and ineligible to become a naturalized citizen of the United States, appears to involve a Federal question, for the reason that the ineligibility of a non-resident alien to inherit real property in any of the States of the Union may be a matter of treaty regulation between the Federal Government and foreign powers, and the States are forbidden to enter into any treaty stipulations, but the complainants do not contend for jurisdiction in the circuit on that ground. Moreover, the tribunal to review the decision of a State court involving such a question would be the Supreme Court of the United States, and that court has determined that it has no jurisdiction for that purpose in this case (*Blythe v. Hinckley*, 167 U. S., 746). This necessarily leaves the question of inheritance to be determined by the State law and by the State courts. The novel doctrine that, in the absence of treaty regulations upon the subject, the right of an alien to inherit does not exist, and that the courts of the State, otherwise competent to pass upon this question, are without jurisdiction, cannot be entertained at this period of our judicial history. Some consideration must be given to the fact that heretofore this whole question of inheritance has by judicial acquiescence been left to the jurisdiction of the States and has become a

54 general rule of property right.

This being so, it follows that the jurisdiction of the circuit court cannot be maintained because the State court, in the exercise of its general jurisdiction, determined the ineligibility of the defendant Florence to inherit an estate which that court was called upon to distribute under the laws of the State.

The other propositions contended for by complainants are for the same reason deemed insufficient to take this case out of the general rule that after a court of a State, with full jurisdiction over property in its possession, has finally determined all rights to that property, a court of the United States will not entertain jurisdiction to annul such decree and disturb rights once definitely determined.

But there is still another reason why this action cannot be maintained. It appears from the bill of complaint that when the original bill was filed on December 3, 1895, neither party was in possession of the land in controversy, but that it was in the hands of the public administrator of the city and county of San Francisco.

Section 738 of the Code of Civil Procedure of California provides that "An action may be brought by any person against another

who claims an estate or interest in real property adverse to him, for the purpose of determining such adverse claim."

In *Holland v. Challen*, 110 U. S., 15, it was held, under a statute similar to this in Nebraska, that a suit in equity could be
 55 maintained against a party claiming an adverse interest in real property where neither party was in possession and where it was "unoccupied and uncultivated land," and it was explained that an action of ejectment would not lie in such a case, because the land had no occupant. In other words, it was vacant land. In the present case not only did the land have an occupant when the original bill was filed, but it was in the possession of the public administrator under the authority and jurisdiction of the superior court of the State. "An administrator appointed by a State court is an officer of that court; his possession of the decedent's property is a possession taken in obedience to the orders of that court; it is the possession of the court, and it is possession which cannot be disturbed by any court" (*Byers v. McAuley*, 149 U. S., 608). It follows that while the possession of the administrator continued no decree for the possession of the real property in his custody could have been entered in favor of the complainants, but it appears that on the next day after the filing of the original bill the defendant Florence secured possession of the property, and she has ever since continued in the possession of the same. She was therefore in possession when the second amended and supplemental bill was filed, and against her at that time, so far as appears from the bill of complaint, a suit in ejectment by the complainants, claiming to be heirs of Thomas H. Blythe, would have afforded a plain, adequate, and complete remedy. Section 1452 of the Code of Civil Procedure of California provides that heirs may themselves or jointly with the
 56 executor or administrator maintain an action for the possession of real estate. Such an action by the heir alone was sustained in *Crosby v. Dowd*, 61 Cal., 557, 600, and see also *Janes v. Throckmorton*, 57 Cal., 368. When the right set up by the plaintiff in a court of the United States is a title to real estate and the remedy sought is its possession and enjoyment the remedy should be sought at law, where both parties have a constitutional right to call for a jury (*Whitehead v. Shattuck*, 138 U. S., 146; *Sanders v. Deveraux*, 61 Fed., 311; *Little Rock Junction R'y v. Burke*, 66 Fed., 83).

As the view here taken of this feature of the case disposes of the motion to dismiss the bill, it will not be necessary to consider the question of parties and diverse citizenship.

The bill of complaint will be dismissed.

(Endorsed:) Opinion on motion of defendant Hinckley to dismiss suit. Filed December 6th, 1897. Southard Hoffman, clerk, by W. B. Beazley, deputy clerk.

57 In the Circuit Court of the United States, Ninth Circuit, in
and for the Northern District of California.

JOHN W. BLYTHE and HENRY T. BLYTHE, Complain-
ants,
vs.
FLORENCE BLYTHE HINCKLEY ET AL., Defendants. } No. 12144.

Third Amended and Supplemental Bill in Equity.

To the judges of the circuit court of the United States for the north-
ern district of California:

John W. Blythe, of Fulton, and citizen of the State of Kentucky,
and Henry T. Blythe, of Blytheville, and a citizen of the State of
Arkansas, by leave of court first had and obtained, file this their
third amended and supplemental bill in equity against Florence
Blythe Hinckley, of San Francisco, and citizen of the State of Cal-
ifornia; and thereupon your orators complain and say:

That on the 3rd day of December, 1895, they filed their original
bill of complaint herein, which was in substance as follows:

That your orators were citizens and residents of the States of
Kentucky and Arkansas respectively; that defendant Florence
Blythe Hinckley and others who are named therein as defend-
ants, but who are not made defendants herein, each were
58 then citizens of the State of California; that complainants
were then the owners as tenants in common with each other
of the lands therein described, which are the same lands hereinafter
described; that said lands were of the value of \$3,000,000 and up-
wards; that said defendants claimed to own adversely to complain-
ants some estate, title, or interest in said land, but that said claims
of said defendants were and are groundless and without warrant of
law, and their claims to said land were a cloud upon complainants'
title thereto, and these complainants prayed that said defendants be
required to set forth in this action by what rights and upon what
grounds their said claims rested, and that it be finally adjudged
herein that defendants, nor either of them, have any right or title
to said land or any part thereof, and that complainants' title thereto
be adjudged good and valid as against defendants and each of them,
and for such other judgment and relief as might be just, and that
said defendants, until the trial hereof, be restrained and enjoined
from meddling or interfering with said lands or the rents and profits
thereof, and for costs.

And your orators say that Thomas H. Blythe died intestate, in
the city and county of San Francisco, State of California, on the 4th
day of April, 1883, being at and before the time of his death a citi-
zen of the United States and of the State of California and a resi-
dent of the city and county of San Francisco; that at and before
the time of his death he was the owner in fee and seized and pos-
sessed of all the following-described real property, situated in the

city and county of San Francisco, State of California, and
 59 bounded and described as follows, to wit:

Beginning at a point on the southerly line of Geary street, distant thirty feet and five inches westerly from the westerly line of Kearny street, thence southerly on a line at right angles to the said southerly line of Geary street fifty feet and three-fourths of one inch, more or less, to the northwesterly line of Market street; thence southwesterly along the said northwesterly line of Market street three hundred and eighty-four feet and ten and seven-eighths inches, more or less, to the northerly line of O'Farrell street; thence westerly along the said northerly line of O'Farrell street forty feet and one and one-half inches, more or less, to the easterly line of Dupont street; thence northerly along the said easterly line of Dupont street two hundred and five feet; thence at right angles easterly sixty feet; thence at right angles northerly twenty feet; thence at right angles westerly twenty feet; thence at right angles northerly fifty feet to the said southerly line of Geary street; thence easterly along the said southerly line of Geary street one hundred and thirty-five feet and six inches; thence at right angles southerly seventy-four feet and six inches; thence at right angles westerly thirty feet; thence at right angles southerly three feet; thence at right angles easterly fifty feet and six inches; thence at right angles northerly seventy-seven feet and six inches to the said southerly line of Geary street, and thence easterly along the said southerly line of Geary street one hundred and fifty-six feet and six inches, more or less, to the point of beginning, being a portion of
 60 the block of land bounded by Kearny, Market, Dupont (Grant avenue), and Geary streets, all in the city and county of San Francisco, State of California.

That said real property was, at the time of the death of said Blythe, and has ever since been and now is of the value of \$3,000,000 and upwards.

And your orators further say that they were and are the next of kin and heirs-at-law of the said Thomas H. Blythe, deceased, and as such your orators were and are entitled to take and have by succession and they did take by succession the estate of said Thomas H. Blythe, deceased, and as such they are the owners in fee of the real property above described and entitled to the possession thereof.

And your orators say that defendant Florence was born in England, the bastard child of an unmarried woman, and was not the heir of Thomas H. Blythe, deceased. At the time of her birth, her mother was a resident of England and a subject of Victoria, Queen of Great Britain and Ireland; that said Florence was born a subject of Victoria, Queen of Great Britain and Ireland, and she remained in England at all times until after the death of said Thomas H. Blythe; that said Thomas H. Blythe was never married.

That after the death of said Thomas H. Blythe, as hereinbefore alleged, the public administrator of the city and county of San Francisco took charge of the estate of said Blythe and entered upon the administration of the same.

That after the death of said Thomas H. Blythe the said Florence,

for the first time, left England and came to the United States and came to San Francisco, she being then an infant who had never before been out of England, and who was then and here ineligible to become a citizen of the United States, and who was, when she arrived in California, a non-resident alien.

That there was not at any time during the life of said Thomas H. Blythe any law in force in England under or by the force of which she said Blythe could have legitimated the said Florence or made her his heir-at law, nor was there at any time during the life of said Blythe any law in force in England under or by the force of which he could have released or absolved the said Florence of and from her allegiance to her sovereign Queen Victoria, or changed her status from that of a subject of England to that of a citizen of the United States, nor was there any such law in force in California.

That after said Florence came to San Francisco, to wit, in the year 1883, one James Crisp Perry, who was then and there a subject of Queen Victoria, was appointed by the superior court of the city and county of San Francisco guardian of said Florence; and thereafter, as such guardian, he commenced a special proceeding in said superior court in the name of said Florence to have the court ascertain, adjudge, and determine the claim of said Florence to the heirship of said Thomas H. Blythe and the ownership of his estate, and in substance that she, said Florence, was the daughter and sole heir of said Thomas H. Blythe under and by virtue of sections 230 and 1387 of the Civil Code of California or under and by virtue of one or the other of said sections, and by virtue thereof to have the said court adjudge and decree that said Florence was the sole heir-at-law of the said Thomas H. Blythe and entitled to inherit his estate. Said proceeding was on said Perry's petition alone.

That your orators appeared in said action or proceeding and filed their answer and cross-complaint therein, denying and contesting the right and title of said Florence and claiming for themselves to be heirs of said Blythe.

That thereafter such proceedings were had on said petition in said court in the said special proceeding that it was for the first time made to appear plainly to the court upon the record, as the fact was and is, that said Florence was an illegitimate child; that she was born in England; that neither she nor her alleged mother nor the mother nor father of the alleged mother had ever been within the United States or eligible to become citizens thereof until after the death of said Thomas H. Blythe, and your orators in that behalf allege that when it was so made plainly to appear to said court that the said Florence was a non-resident alien and had never been a *bona fide* resident of the State of California or of the United States until after the death of said Thomas H. Blythe and descent cast, and that she was not his heir, it was the duty of said court to dismiss the petition or complaint, or both, of said Florence in so far as the title and descent of the above-described real property was involved or affected, for want of jurisdiction.

Your orators further say that in the said proceeding wherein the

63 said Florence was petitioner and plaintiff it was at the trial thereof attempted to be proven by her and in her behalf that the said Thomas H. Blythe, after the birth of the said Florence and before his death and while he was living in the State of California and while the said Florence was living in England as aforesaid, attempted to legitimate the said Florence by adoption under said section 230 of the Civil Code, or to institute her as his heir under said section 1387 of said Code, and your orators say that the parties went to trial.

And your orators further say that said court, without any jurisdiction so to do, decided in substance and effect that said Thomas H. Blythe had in his lifetime adopted and legitimated the said Florence by holding and deciding that sections 230 and 1387 of the Civil Code of California operated upon said Florence while an alien and residing in England, and gave power to said Blythe to adopt her and make her his heir while said Florence was in England and said Blythe was in California, which said statute did not do; and in that behalf your orators say that in making said decision the court did not take into consideration section 1978 of the Revised Statutes of the United States, nor were the rights of your orators or of said Florence, under that section or at all, adjudged or determined.

That from said judgment your orators appealed to the supreme court of the State, and in that court the cause was argued and the judgment appealed from, affirmed by a divided court, but
64 your orators allege without jurisdiction so to do, for the reasons herein stated, and without considering the questions herein presented.

And in that behalf your orators say that they are informed and believe, and they thereupon allege, that they are not precluded by said decision, which was limited to declaring that Florence was said Blythe's heir nor by anything contained in the record of the said proceedings upon which said last decision was made, from prosecuting this their action in this court, nor is this court precluded from entertaining jurisdiction of this action and deciding it on its merits, nor is said last decision binding or obligatory as authority or otherwise upon this court.

And your orators further say that heretofore, to wit, on June 18, 1894, said Florence, calling herself Florence Blythe, filed in said superior court in the matter of the estate of Thomas H. Blythe, deceased, her petition for distribution praying for an order of said court distributing to her the share of said estate to which she claimed to be entitled, to wit, the whole of said estate, embracing the real property first above described, to which she alleged herself to be entitled only by descent as sole heir-at-law and sole next of kin to said Thomas H. Blythe, deceased.

That in her said petition it was made plainly to appear to said court, as the fact then was and is, that said Florence, the petitioner, was a non-resident alien, in which capacity alone she claimed said real estate, and was not and never had been a citizen of the United

65 States or a resident of California and had never been in the United States until after the death of said Thomas H. Blythe and descent cast, at which time she was a non-resident alien; and your orators say that it was then the duty of said court to dismiss the said petition for distribution of said Florence in so far as the title and descent of the above-described real estate was involved or affected for want of jurisdiction and because said Florence was not the heir of said Thomas H. Blythe; that your orators answered said petition for distribution, and thereby took issue upon all the material averments thereof, and therein claimed said estate as heirs of said Blythe.

That afterwards the court, without right or jurisdiction so to do, heard said petition for distribution, and afterwards, on October 26, 1894, said court granted a decree of distribution, and on that day a document which falsely purported to be a decree of distribution of nearly all the property of said Thomas H. Blythe to said Florence, embracing all the real property above described, was signed by the judge of said court and filed with the clerk, and on the next day thereafter was recorded in the minute book of said court.

And your orators say that said pretended decree of distribution was and is null and void for want of jurisdiction in said court to make the same for the following reasons, among others: Section 671 of the Civil Code of California, reading as follows: "Every person, whether citizen or alien, may take, hold and dispose of property, real or personal, within this State," was and is void as to aliens, and section 672 of said Civil Code which reads as follows: "If a non-resident alien take by succession, he must appear and claim the property within five years from the time of succession, or be
66 barred," under which alone she claims title, is also void as to aliens, and especially as to said Florence.

Your orators allege that said sections and each of them is an encroachment upon and an invasion and violation of and a substitution for the treaty-making power of the United States, and, if enforced, operate as treaty provisions between the State of California and all foreign governments, and were and each of them is void and in conflict with and forbidden by section 10, article I, of the Constitution of the United States and with the treaty-making power thereof, and in violation of and in conflict with section 1978 of the Revised Statutes of the United States, and both of them are and each of them is in excess of the jurisdiction of the State of California to enact, and of the courts of California to enforce; that said judgment or decree awarding said real property to said Florence on her petition alone, as was done, has no other legal support or justification than said sections of the Code of California, which are void, so far as they apply to aliens, and particularly to said Florence, for the reasons that they violate the Constitution and laws and treaties of the United States, and because California and her courts have no jurisdiction to enact or enforce said statutes or either of them as to aliens, and said statutes violate and each of them violates and is forbidden by the Constitution of the United States, the treaty-making power, and existing treaties of the United States, and

said judgment or decree in execution of said statutes is void.

67 Your orators allege that none of the constitutional or other objections aforesaid to the jurisdiction of said court or the validity of said statutes, as applicable to said Florence, were decided or considered by the court upon the hearing of said petition for distribution; that the judgment of said superior court awarding said property to said Florence was further without jurisdiction, for said court held, adjudged, and decreed that said Blythe's alleged action under section 1387 of the Civil Code of California, reading as follows: "Every illegitimate child is an heir of the person who in writing, signed in the presence of a competent witness, acknowledges himself to be the father of such child," operates and did operate upon said Florence in England and outside of and beyond the geographical jurisdiction and boundaries of the State of California, and said court adjudged and held that said statute and said action operated to change and fix the social, political, and legal status of said Florence while an illegitimate alien, as she then and there was residing in England at the time of descent cast and always prior thereto.

Your orators say that said section 1387 does not in terms operate beyond the geographical boundaries of the State of California, and it had no operation or effect at any time in the Kingdom of Great Britain, nor did any alleged action under it; and it had no operation upon said Florence or her right to said real property at the time of descent cast or prior thereto, nor did said judgment so operate; that said section, as construed by the court, was and is against article I, section X, of the Federal Constitution and an invasion of the jurisdiction of international intercourse between the United States Government and the government of England, which jurisdiction is 68 exclusively with the United States and was and is unconstitutional and void because thereof, and because of a lack of power and jurisdiction in California or its courts to give said statute the operation which it was adjudged by said court to have, and invades the treaty-making power of the United States, and said section is in violation of section 1978 of the Revised Statutes of the United States and of the rights of complainants. Your orators say that said judgment is a fraud upon the laws of the United States and upon complainants, and is therefore void; and your orators say that on the 21st day of September, 1892, said Florence was married to Frederick W. Hinckley and has taken the name of Florence Blythe Hinckley and she is sued herein under said name, and her husband is now dead, and complainants now make no claim against him, and in the original bill the Blythe Company was made a defendant, but subsequently a decree was made, upon the motion of the complainants, dismissing the cause as to the Blythe Company.

And your orators further say that heretofore and since the time of filing the original bill herein, to wit, on January 2nd, 1896, said Florence, calling herself Florence Blythe Hinckley, filed in said superior court, in the matter of the estate of Thomas H. Blythe, deceased, her petition for final distribution to her of said estate, wherein and whereby she prayed for an order of said court dis-

tributing to her the residue of said estate then remaining undistributed, amounting to the sum of \$89,842.94, the same and the whole thereof being the rents accrued from the real property aforesaid, to which she alleged herself to be entitled only by descent as the sole heir-at-law and next of kin of said decedent, Thomas H. Blythe; the consideration of which petition was without the jurisdiction of said court as aforesaid.

That in her said petition it was made plainly to appear to said court, as the facts then and there were, that said Florence, the petitioner, was born and continued to be a British subject and a non-resident alien until after the death of said Blythe and descent cast, and she was not and never had been a resident or inhabitant of the State of California, and never had been within the United States until after the death of said Thomas H. Blythe and descent cast; and your orators say that it was the duty of said court then to dismiss said petition for final distribution to said Florence Blythe Hinckley for want of jurisdiction in said court to adjudge her capable of inheriting said real property. Said proceeding was on the petition of said Florence alone.

That notice of said petition was given to your orators, who were notified and invited to come into court and show why said petition should not be granted.

That, in obedience and response to said notice, your orators did, on January 16, 1896, file in said court their answer wherein and whereby they denied the right of the said Florence to have said rents distributed to her and claimed that they were the heirs and next of kin of said Thomas H. Blythe, deceased, and entitled to said rents.

That afterwards, on the 16th day of January, 1896, said court, sitting in probate, without right or jurisdiction so to do, heard said petition for final distribution, and wrongfully struck from the files the answer and opposition so theretofore filed by your orators, and when your orators arose and attempted to object to and show cause why said petition should not be granted, said court refused to permit your orators to be in anywise heard.

And afterwards, on January 18th, 1896, said court granted a decree of final distribution, and on that day a document, which falsely purported to be a decree of final distribution, distributing to said Florence all the residue of said estate, based solely upon said petition last aforesaid, was signed by the judge and filed with the clerk and entered in the minute book of the court.

And your orators say that said pretended decree of final distribution was and is null and void for want of jurisdiction in said court to make the same, for the reasons as hereinbefore specified; and your orators further say that at the date of filing the original bill herein neither party hereto was in possession of the land hereinbefore described, but the same was in the hands and possession of the public administrator of the city and county of San Francisco, State of California.

But since the filing of said bill, to wit, December 4, 1895, said Florence has secured possession of said real property and the said

rents and the whole thereof through said pretended judgments and decrees aforesaid, and without any other or further right than as above set forth, and she is now in possession of the same.

71 And your orators say that sections 671, 672, and 1387 of the Civil Code of California, through which, and not otherwise, said Florence claims title to said real property and said rents, are and each of them is in conflict with existing treaties between the United States of America and Russia and Switzerland and France and England and against the Constitution of the United States in the particulars hereinbefore mentioned, as well as the fourteenth amendment thereto, which limits the jurisdiction of the State to its own citizens.

The complainants claim that they had the right, as citizens of the United States, to inherit the real property here involved under the laws of California and under article IV, section 2, of the Constitution of the United States and under section 1978 of the Revised Statutes of the United States, and that said Florence has and had no right thereto, because at the time of the death of Thomas H. Blythe and descent cast she was an illegitimate alien and a British subject and was and always had been in England, and that in determining the question of the rights of the parties herein the construction and application of the Constitution of the United States are involved, and therefore your orators allege and claim that this court has jurisdiction thereof, on the ground that the construction and application of the Federal Constitution are involved, as well as on the ground of diverse citizenship of the parties, and because said sections of said Civil Code violate the Federal Constitution, as herein stated.

That said real property is all of it built upon, being covered
72 with stores and tenements, which are much used and in great demand as places of business and which are all occupied by tenants and bring in a monthly rental of about \$12,000, which said Florence receives each month without any just or lawful right so to do, for the reason that the same belong to your orators.

That said Florence has no property; that she is and will continue to be insolvent and largely indebted, to wit, in the sum of \$500,000 and upwards, and wholly unable to account for and restore said rents and income received, and which she will continue to receive, to said estate or to your orators.

And defendant Florence claims some right or title to said lands and property adverse to your orators, which claim is false and groundless and a cloud upon your orators' title.

Your orators further show to this honorable court that the suit herein set forth and pending is founded upon section 738 of the Code of Civil Procedure of the State of California, the purpose of which is to provide for determining an adverse claim, should one be set up by defendant, in a suit in equity; that if your orators be required to institute a suit in ejectment they will be deprived of their right under said statute to have said adverse claim set up by defendant, if she make such claim, and to have said claim first determined.

Your orators say that if defendant, under the laws and Constitu-

tion of the United States, as in this bill set forth, had no inheritable blood at the time of descent cast, as your orators allege, then she has no title to the property described herein and has no right to impose on your orators a vast and unnecessary pecuniary burden and cost and the expense of establishing their title, though it be as they allege it to be in this bill.

73 Your orators allege that their proof of their title in ejectment is scattered and requires a large outlay of money, the procurement of testimony of witnesses residing at remote distances from this court; that many of the witnesses of the facts herein set forth in your orators' favor are dead and many of them are aged and infirm; that it will require great labor, time, and delay to establish the facts as they exist, and will require unnecessary labor of the court to examine said testimony if presented in ejectment, all of which will be without advantage or benefit to the defendant, and will neither impair nor strengthen her rights, if any, and is immaterial to her.

Your orators say that they do not controvert defendant's title to said real property if she can and did take the same by inheritance under the laws and facts set forth in this bill; that in order to ascertain the validity of defendant's adverse claim it is wholly unnecessary to go to the cost, expense, and delay of establishing complainants' title; that said last requirement does not rest upon your orators under said section of said statute; that the rule prevailing in ejectment that plaintiff must first show title in himself has no application to this suit.

That the purpose of said statute and of equity jurisdiction thereunder is to set up and establish, if it exists, an adverse claim in the defendant. This is its primary and exclusive object, and your orators aver that their rights under said section would be

74 violated and their equities denied by forcing them to present their case in a court of law.

Your orators aver and concede that if defendant, under the circumstances and under the law stated in this bill, be the child of Thomas H. Blythe and had inheritable blood and took by descent the real property herein described, all of which is easily proved, if true, by accessible testimony, your orators are one degree further removed in inheritable blood than defendant from said Thomas H. Blythe; but your orators aver and contend that defendant had no inheritable blood whatever. Your orators show that she is required under said statute to establish affirmatively that she inherited said property; that the establishment of her adverse claim, if valid, is a matter of law and settles the case finally for her. If the law does not make her eligible to take, her claim is void, and she has no equitable or other interest in embarrassing your orators in the attainment of their rights to said estate; that this honorable court sitting in equity, has power to reduce this controversy, and said statute reduces it, to the narrow scope of determining the adverse claim of defendant, should one be by her set up. A squatter's title is not recognized by said statute.

And your orators aver that it is inequitable, unjust, and oppressive to impose upon them the vast cost, expense, and delay and risk

of the death of witnesses hereinabove stated and of procuring their proof, in which defendant has no interest and which is immaterial to her and in nowise affects or benefits her.

75 Wherefore, in consideration of the premises, and inasmuch as your orators are remediless at law and can have no adequate relief save in a court of equity, where matters of this and the like nature are properly cognizable and relievable, and to the end that the respondent may appear and answer all and singular the matters and things hereinbefore in this their amended and supplemental bill complained of, but without oath to her several answers, your orators expressly waiving the oath of respondent to her answer hereto, your orators pray that defendant be required to set forth and specify with particularity any adverse claim which she may have to the real estate and property here in controversy and how and in what manner and from whom she derived the same.

That your orators order, adjudge, and decree that your orators were at the time of the death of said Thomas H. Blythe and now are the heirs-at-law of the said Thomas H. Blythe, and as such heirs did inherit and were and are entitled to inherit the said above-described real estate from said Thomas H. Blythe.

That the defendant to this bill has not now and never has had any right, title, or interest in or to the above-described real estate and property as heir-at-law of the said Thomas H. Blythe or otherwise.

That the title of your orators to said real estate be quieted in and by the decree of your honors, and that they be let into possession thereof.

That as to the said Florence Blythe Hinckley an account of the rents and profits which have been received or which may be
76 hereafter received up to the final hearing by the said Florence Blythe Hinckley or by any one claiming under her be taken, and that upon the coming in of the report of the value thereof, and the confirmation of said report, — be adjudged and decreed to your orators.

And your orators pray for such other and further and particular relief as to your honors may seem meet and proper; that your honors appoint a receiver herein to take possession of the said above real estate, and to hold the same pending this action, and to collect the rents and profits of said real estate, and to manage the same under such particular or general orders as your honors may give and direct.

And your orators pray for general relief and for their costs.

S. W. & E. B. HOLLADAY,
Solicitors for Complainants.

L. D. McKISICK AND
CHANDLER & HOLLADAY.

(Endorsed:) Service of a copy of the within bill is admitted this 22d day of December, 1897. Rob't Y. Hayne, of counsel for Florence Blythe Hinckley. 3d amended and supplemental bill. Filed December 22nd, 1897, at 12.11 o'clock p. m. Southard Hoffinan, clerk, by W. B. Beaizley, deputy clerk.

77 In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.

JOHN W. BLYTHE ET AL., Complainants, }
vs. } No. 12144.
FLORENCE B. HINCKLEY ET AL., Defendants. }

Bill of Exceptions as to Contents of Third Amended Bill.

On the 21st day of December, 1897, the complainants offered, as a part of their third amended and supplemental bill herein, the following:

"The issue hereby tendered in this bill of complainants' right to inherit the real property of Thomas H. Blythe, deceased, was not decided or adjudged by the State court, nor was the legal effect of the alienage of said Florence decided, nor was the construction or application of the Constitution, statutes, or treaties of the United States thereto, as in this bill specified, or the validity of sections 671, 672, or 1387 of the Civil Code of California, as applied to aliens, presented, considered, or decided, as fully appears from the petition of Florence Blythe, under section 230 of said Code and 1664 of the Code of Civil Procedure of California, in the superior court of the city and county of San Francisco, State of California, filed October 1, 1885, number 2401, and entitled 'In the matter of the estate of Thomas H. Blythe, deceased.'"

78 And moved this court to be permitted to file said bill with said provisions therein. The said court refused to allow said third amended and supplemental bill to be filed with said provisions included therein, and required said complainants, as a condition to filing said bill, to eliminate said provisions therefrom; to which ruling complainants objected and excepted, and filed said bill without said provisions, though tendering the same at the time of filing said bill, but insisting upon their right to have said provisions retained in said bill; and complainants herewith pray to be permitted to file said provisions as a part of said bill.

S. W. & E. B. HOLLADAY,
Solicitors for Complainants.

The foregoing petition coming on to be heard before the court and having been considered, the court denied the same and refused to allow said provisions to be included as a part of said bill; to which ruling complainants excepted, and pray that said exception be filed and made a part of the record, which is so ordered.

WM. W. MORROW, *Judge.*

Dated Dec. 22, 1897.

(Endorsed :) Application, objection, & exception of complainants as to refusal of court to permit certain provisions to go into 3d amended & supp. bill. Filed December 22, 1897. Southard Hoffman, clerk, by W. B. Beazley, deputy clerk.

79 In the Circuit Court of the United States for the Ninth Circuit and Northern District of California.

JOHN W. BLYTHE and HENRY T. BLYTHE, Complainants,

vs.

FLORENCE BLYTHE HINCKLEY, FREDERICK W. HINCKLEY (Her Husband), and The Blythe Company (a Corporation), Defendants.

No. 12144

Final Decree.

The various matters herein disposed of having been duly and regularly argued and submitted to the court for decision, and the court having examined the same and having, on the 6th day of December, 1897, rendered and filed its opinions in relation thereto :

Now, therefore, it is considered, ordered, adjudged, decreed, and determined as follows, viz :

First. That the decree *pro confesso* of July 3rd, 1897, in favor of the cross-complainant, The Blythe Company, be, and the same is hereby, declared to be invalid, and the same is hereby set aside, vacated, and annulled as against the defendant Florence Blythe Hinckley, and the rule taking the cross-bill of the Blythe Company *pro confesso* as against the said Florence Blythe Hinckley, entered in the rule book in the clerk's office under date of April 6th, 1897, be, and the same is hereby, set aside, vacated, and annulled, and the order of the court of July 1st, 1897, that the cross-bill of the Blythe Company be taken *pro confesso*, be, and the same is hereby, set aside, vacated, and annulled.

Second. That the decree *pro confesso* of July 3rd, 1897, in favor of the cross-complainant, The Blythe Company, be, and the same is hereby, declared to be invalid as against the complainants in the suit, and the same is set aside, vacated, and annulled, not only as against the defendant Florence Blythe Hinckley, as aforesaid, but also against the complainants, John W. Blythe and Henry T. Blythe, and against each of said complainants, and in every particular and in all respects, and the rule taking the said cross-bill of the Blythe Company *pro confesso* as against said complainants entered in the rule book in the clerk's office under date of May 4th, 1897, be, and the same is hereby, set aside, vacated, and annulled, and the order of the court of July 1st, 1897, that the cross-bill of the Blythe Company be taken *pro confesso* be, and the same is hereby, set aside, vacated, and annulled.

Third. That the original "complaint" of the complainants, John W. Blythe and Henry T. Blythe, filed December 3rd, 1895, and also the "amended complaint" of said complainants, filed December 12th, 1895, and also the "second amended and supplemental bill in equity" of said complainants, filed January 14th, 1897, and also the complainants' third amended and supplemental bill, filed by leave of court this 22nd day of December, 1897, after the rendition

81 of the decision of the court upon the matters determined herein, but before the signing of this decree, be, and the same

are each hereby, finally dismissed as against each and all of the parties named therein respectively as defendants, and in all respects and in every particular, for want of either Federal or equity jurisdiction and without prejudice to complainants' right to bring or maintain an action at law.

Amended January
20, 1898. Wm. W.
M., judge.

Fourth. That the pleading of the Blythe Company, filed on December 28th, 1895, and styled "Answer of the Blythe Company to the amended complaint," praying (among other things) for relief against the defendant Florence Blythe Hinckley, and also the pleading of the Blythe Company, filed on February 1st, 1897, styled "Answer of the Blythe Company, a corporation, to the second amended and supplemental bill of complaint of John W. Blythe and Henry T. Blythe, complainants," praying (among other matters) for relief against the defendant Florence Blythe Hinckley, be, and the same are, finally dismissed so far as they or either of them constitute a cross-bill or cross-complaint against any party to the cause, and that the pleading of the Blythe Company, filed on the 16th day of February, 1897, styled "Cross-bill of complaint in equity of the Blythe Company," together with the amendments made thereto, be, and the same is hereby, finally dismissed as against each and all of the parties named therein as defendants and in all respects and in every particular.

Fifth. The said Florence Blythe Hinckley has paid into court for the Blythe Company the costs imposed upon her as a condition of setting aside said decree in favor of the Blythe Company, and has complied in all respects with the orders of the court in relation to the terms of the setting aside of said decree.

Sixth. This decree is rendered and is directed to be entered and enrolled as and for a final decree.

Dated December 22nd, 1897.

WM. W. MORROW,
Circuit Judge.

(Endorsed :) Final decree in favor of Florence Blythe Hinckley. Filed and entered December 22, 1897. Southard Hoffman, clerk.

83 In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.

JOHN W. BLYTHE and HENRY T. BLYTHE,	}	No. 12144. Petition for Appeal.
Complainants,		
vs.		
FLORENCE BLYTHE HINCKLEY ET AL., De-	}	
fendants.		

To the hon. the judges of the circuit court above named :

Your petitioners, the complainants above named, respectfully represent that there is manifest error committed to the injury of petitioners by that part of the final decree pronounced in this case on

the 22d day of December, 1897, as amended by the court on the 20th of January, 1898, being paragraph " third " of said decree, in which said part of said final decree this court dismissed complainants' third amended and supplemental bill, and denied jurisdiction of the suit, allegations, facts, and averments of complainants, and decided that it had no jurisdiction thereof on the motion of defendant Florence Blythe Hinckley to dismiss for want of jurisdiction, and your petitioners respectfully represent that this court has jurisdiction of said suit, and erred in holding and deciding, as it did do, that it had no jurisdiction of complainants' suit on any ground set up by complainants, and that no Federal question was involved therein.

Your petitioners further show that they are entitled to
 84 an appeal therein, because the jurisdiction of the court was involved and the construction and application of the Constitution of the United States was involved in the matters, allegations, and averments of complainants, though this court erred in deciding otherwise, and that they were not involved; and your petitioners state that they are entitled to an appeal on the further ground that this court erred in deciding on said motion, as it did, that sections 671, 672, and sections 230 and 1387 of the Civil Code of California in their construction and application to this suit did not contravene the Constitution of the United States, as stated in the assignment of errors herewith filed.

Wherefore petitioners, considering themselves aggrieved by the decision of this honorable court in all the particulars stated, pray for an appeal from said final decree to the Supreme Court of the United States, as authorized by section 5 of the judiciary act of Congress of the United States, approved March 3d, 1891, on all the grounds stated in the assignment of errors hereto attached and herewith filed.

Your petitioners herewith file their bond in the penal sum of \$500.00, which bond is approved by the Hon. William W. Morrow, one of the judges of this court.

S. W. & E. B. HOLLADAY,
Solicitors for Complainants.

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Order.

Upon consideration of the petition for appeal to the Supreme Court of the United States by John W. Blythe and Henry T. Blythe, complainants, it is ordered that said appeal be granted, and that the bond in the penal sum of \$500.00 having been executed and approved by the court, this appeal is granted and allowed in open court.

WM. W. MORROW,
Circuit Judge.

(Endorsed :) Complainants' petition for appeal. Filed March 2, 1898. Southard Hoffman, clerk, by W. B. Beazley, deputy clerk.

86 In the Circuit Court of the United States, Ninth Circuit, in
and for the Northern District of California.

JOHN W. BLYTHE and HENRY T. BLYTHE, Complain-	}	No. 12144.
ants,		
<i>vs.</i>		
FLORENCE BLYTHE HINCKLEY ET AL., Defendants.		

Assignment of Errors.

And now on the — day of — come the said complainants, by their solicitors, and say that the decree in said cause is erroneous and against the just rights of said complainants for the following reasons:

1.

The circuit court erred in entertaining the motion of defendant Florence Blythe Hinckley to dismiss for want of jurisdiction.

2.

The court erred in sustaining said motion to dismiss for want of jurisdiction.

3.

The court erred in rendering final decree for defendant Florence and against complainants dismissing the suit for want of jurisdiction.

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4.

The court erred in holding that it had no equity jurisdiction of this suit, in view of the fact that it has sustained the motion of defendant to quash the summons issued herein, because said suit was cognizable only in a court of equity, by its order dated February 10, 1896, set forth in the record and bill of exceptions herein.

5.

The court erred in holding that complainants' remedy was at law and not in equity.

6.

The court erred in holding that it had no jurisdiction of complainants' suit, because the real property described by complainants and in question herein was in the charge of the public administrator of the city and county of San Francisco at the time the suit was instituted.

7.

The court erred in holding that it lost jurisdiction of complainants' suit because it was alleged by complainants in their 2d and 3d amended and supplemental bill that Florence Blythe Hinckley, defendant, gained possession of said real property after the institution of this suit.

8.

The court erred in holding that the laws of California governed, extended to, or applied to the alleged descent of the real property described by complainants to Florence Blythe, said defendant, then and always theretofore an illegitimate child and a British subject residing in England.

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9.

The court erred in holding that it had no jurisdiction of the controversy between complainants and defendant Florence upon the allegations of the third amended and supplemental bill, inasmuch as it appears by the bill that complainants therein claim that section- 671 and 672 of the Civil Code of the State of California are in contravention of the Constitution of the United States.

10.

The court erred in holding that the title to the real property described by complainants did not vest in complainants on the death of Thomas H. Blythe, under the laws of California and section 1978 of the Revised Statutes of the United States and under their allegations (admitted by the motion to dismiss) that they were and are the next of kin.

11.

The court erred in holding, under the allegations of complainants, that said Florence Blythe could be or was adopted by or made the heir of Thomas H. Blythe by any act of his while he was in California and she was in England, a British subject and an illegitimate child.

12.

The court erred in not holding, under the allegations of complainants in that behalf, admitted to be true by the motion to dismiss for want of jurisdiction, that the State courts of California had no jurisdiction to entertain the petition and complaint of Florence Blythe, described by complainants, to establish her title as heir of Thomas H. Blythe to the real property described.

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13.

The court erred in holding that the Constitution of the United States, its construction and application, were not involved in determining the claim of Florence Blythe Hinckley and the claim of complainants to take the real property described by complainants be descent.

14.

The court erred in holding that sections 230 and 1387 of the Civil Code of California, or either of them, empowered Thomas H. Blythe, while being and acting in California, to adopt or legitimate defendant Florence Blythe, or to make her his heir while she was residing in London, England, as an illegitimate child of Julia

Perry and a British subject, and erred in holding that said statutes or any action of said Blythe thereunder did so operate.

15.

The court erred in not holding that the proceedings of the State court of California set forth by complainants, recognizing said Florence as the heir of Thomas H. Blythe, deceased, were void for the reasons in said 3d amended bill stated, and for want of jurisdiction in said State court to entertain her petition or complaint under section 1664 of the Code of Civil Procedure or under any other law of California.

16.

Said court erred in holding that State laws controlled the decision of said defendant Florence Blythe's claim to take the real property described by descent, and erred in holding that no Federal question was involved in determining her claim.

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17.

Said court erred in holding that the claim of said Florence Blythe to said real property involved in this court no Federal question, and erred in holding that the construction and application of the Constitution of the United States to said claim was not involved, and in holding that the circuit court of the United States got no jurisdiction on the ground that the construction and application of the Constitution of the United States was involved.

18.

The court erred in holding that sections 671 and 672 of the Civil Code of California set up by complainants, so far as they related to non-resident aliens, were not and each of them did not contravene the Constitution of the United States, and particularly section 10, article I, thereof.

19.

The court erred in holding that sections 230 and 1387 of the Civil Code of California referred to by complainants, or any act of Thomas H. Blythe under them, operated beyond the territorial limit of California for any purpose whatever, and that said Florence took any rights under said sections or said alleged acts of Thomas H. Blythe.

20.

The court erred in refusing to permit complainants to incorporate in their third amended and supplemental bill, as a part thereof, the following provisions, viz: "The issue hereby tendered in this bill of complainants' right to inherit the real property of Thomas H.

Blythe, deceased, was not decided or adjudged by the State court, nor was the legal effect of the alienage of said Florence decided, nor was the construction or application of the constitution, statutes, or treaties of the United States thereto, as in this bill specified, or the validity of sections 671, 672, or 1387 of the

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Civil Code of California, as applied to aliens, presented, considered, or decided, as fully appears from the petition of Florence Blythe under section 230 of said Code and 1664 of the Code of Civil Procedure of California, in the superior court of the city and county of San Francisco, State of California, filed October 1, 1885, number 2401, and entitled "In the matter of the estate of Thomas H. Blythe deceased."

21.

The court erred in holding that any Federal question was presented by Florence Blythe in the proceedings mentioned in the 3d amended and supplemental bill in the State court, and in holding that the proceedings in the State court were *res adjudicata* in this case.

22.

The court erred in holding that it had no jurisdiction of the controversy between the complainants and the defendant Florence upon the allegations of the 3d amended and supplemental bill, inasmuch as it appeared from the bill that the case involves the construction or application of the Constitution of the United States.

23.

The court erred in holding that it had no jurisdiction of complainants' suit and of the matters and allegations of complainants' 3d amended and supplemental bill, it appearing on the face of the bill that one of the complainants was a citizen of Arkansas and one of them was a citizen of Kentucky, and that the defendants were citizens of California, and the subject-matter in controversy, to wit, the real estate, is situate in the northern district of California and within the jurisdiction of the court; all of which facts were admitted by the motion to be true.

Wherefore complainants pray that the errors herein assigned be adjudged to be well taken, and that the decree of the circuit court rendered herein dismissing the complainants' third amended and supplemental bill be reversed, and that judgment be rendered for appellants or plaintiffs in error.

S. W. & E. B. HOLLADAY,
Solicitors for Complainants.

(Endorsed :) Complainants' assignment of errors. Filed March 2 1898. Southard Hoffman, clerk, by W. B. Beaizley, deputy clerk.

93

Order Allowing Appeal (Minute).

At a stated term, to wit, the November term, A. D. 1897, of the circuit court of the United States of America of the ninth judicial circuit in and for the northern district of California, held at the court-room, in the city and county of San Francisco, on Wednesday the 2nd day of March, in the year of our Lord one thousand eight hundred and ninety-eight.

Present: Honorable William W. Morrow, circuit judge.

JOHN W. BLYTHE ET AL.
 vs.
 FLORENCE BLYTHE HINCKLEY ET AL. } No. 12144.

Upon application of E. B. Holladay, Esq., one of the solicitors for complainants, and upon consideration of the petition for appeal to the Supreme Court of the United States by John W. Blythe and Henry T. Blythe, complainants, it is ordered that said appeal be granted and that the bond in the penal sum of \$500.00 having been executed and approved by the court, this appeal is granted and allowed in open court.

94 In the Circuit Court of the United States, Ninth Circuit
 Northern District of California.

JOHN W. BLYTHE and HENRY T. BLYTHE, Com-
 plainants,
 vs.
 FLORENCE BLYTHE HINCKLEY ET AL., Defendants. } No. 12144.

Bond on Appeal.

Whereas John W. Blythe and Henry T. Blythe, complainants in the above-entitled suit, are about to appeal to the Supreme Court of the United States from the decree of the circuit court of the United States in and for the northern district of California, entered in said suit on December 22nd, 1897, in favor of defendant Florence Blythe Hinckley and against complainants, John W. Blythe and Henry T. Blythe, dismissing their said suit for want of jurisdiction:

Now, therefore, in consideration of the premises and of such appeal, the undersigned, the American Surety Company of New York, a corporation duly authorized and empowered so to do, does hereby undertake and promise on the part of the appellants, John W. Blythe and Henry T. Blythe, that the said appellants shall prosecute their said appeal to effect, and if they fail to make their plea good shall answer and pay to said Florence Blythe Hinckley all costs that may be awarded against them or the appeal or on a dismissal thereof not exceeding the sum of five hundred dollars (\$500.00), to which amount it, the American Surety Company of New York, acknowledges itself bound.

95 In witness whereof the said American Surety Company of New York has hereunto affixed its corporate seal and caused its corporate name to be hereto signed and these presents to be executed by its proper officers thereunto duly authorized this 28th day of February A. D. 1898.

AMERICAN SURETY COMPANY
 OF NEW YORK,

[SEAL.]

By S. G. MURPHY,

Resident Vice-President.

CHARLES A. SHURTLEFF,

Resident Assistant Secretary.

Attest: JAMES R. GARNISS,
Resident Manager.

Registered for American Surety Co. of N. Y. by First nat'l bank, San Francisco, Cal., by J. K. Carter.

(Endorsed:) Undertaking on appeal (complainants). Approved this second day March, 1898. Wm. W. Morrow, judge. Filed March 2, 1898. Southard Hoffman, clerk, by W. B. Beazley, deputy clerk.

96 *Order that Clerk Send Certain Papers to Supreme Court of the United States.*

At a stated term, to wit, the November term, A. D. 1897, of the circuit court of the United States of America of the ninth judicial circuit in and for the northern district of California, held at the court-room, in the city and county of San Francisco, on Wednesday, the 2nd day of March, in the year of our Lord one thousand eight hundred and ninety-eight.

Present: Honorable William W. Morrow, circuit judge.

JOHN W. BLYTHE ET AL.

vs.

FLORENCE BLYTHE HINCKLEY ET AL.

} No. 12144.

Upon motion of Robert Y. Hayne, Esq., counsel for the defendant Florence Blythe Hinckley, it is ordered that the clerk of this court send up to the Supreme Court of the United States as a part of the record copies of the following documents: The original complaint, the amended complaint, the second amended and supplemental bill, the third amended and supplemental bill, the final decree in the cause, a copy of this order, and that no certificate shall be sent by the clerk to the Supreme Court of the United States without a compliance with this order.

Counsel for said defendant, Florence Blythe Hinckley, also objected to the making of a second certificate upon jurisdictional questions in this cause.

97 *In the Circuit Court of the United States for the Northern District of California.*

JOHN W. BLYTHE and HENRY T. BLYTHE, Complain-

ants,

vs.

FLORENCE BLYTHE HINCKLEY ET AL., Defendants.

} No. 12144.

Certificate to Jurisdictional Questions.

Be it remembered that on the 14th day of January, 1897, the above-named complainants, by leave of the said court first had and obtained, filed their second amended and supplemental bill against the defendants in the above-entitled action.

And be it further remembered that on the 15th day of February, 1897, the defendant Florence Blythe Hinckley, by leave of the court

appeared specially in said action, by her solicitor, and moved the court to dismiss this suit upon the following grounds, to wit:

"That it appears from the second amended and supplemental bill of complaint filed in the above-entitled suit this court has no jurisdiction of the matters and things in the alleged cause of action in said second amended and supplemental bill of complaint stated."

That thereafter said motion came on to be regularly heard before the court, and was argued by the respective solicitors and
 98 counsel for the complainants and said Florence Blythe Hinckley, and the court, having taken time to consider the same, did, after due consideration thereof, sustain the said motion and ordered this suit to be dismissed for want of jurisdiction, but gave the complainants leave to amend their bill upon the understanding that it would not necessitate any further argument, but should be subject to the prior motion to dismiss the second amended and supplemental bill and to the order for a final decree entered thereon; that thereafter, in due season, on the 22nd day of December, 1897, the complainants, pursuant to the leave given them by said circuit court, filed their third amended and supplemental bill against the said defendant, Florence Blythe Hinckley, and thereupon and in due season the said defendant, by her solicitor, appeared to said last bill and moved the court to dismiss the suit upon the same grounds and for the same reasons stated and contained in the motion hereinbefore set out to dismiss the second amended and supplemental bill.

It was thereupon stipulated and agreed in open court by and between the solicitors for complainants and said defendant, Florence Blythe Hinckley, with the consent of the court, that said last-named motion should be and the same then and there was submitted to the court for its decision upon the facts, matters, and things stated and alleged in said third amended and supplemental bill of complaint and upon the said motion of said defendant, Florence Blythe Hinckley, and upon the arguments of solicitors and counsel for the respective parties made by them on the hearing of the motion to dismiss the suit and cause of action in said second amended
 99 and supplemental bill stated and alleged. The final decree was rendered, entered, and enrolled in said cause on the 22nd day of December, 1897, which final decree is hereby referred to and made a part hereof, and the clerk of this court is hereby directed to annex to this certificate and to certify up to the Supreme Court of the United States as part of this certificate a copy of said final decree.

Upon the consideration of the last-named motion to dismiss this suit upon the ground, to wit:

"That it appears from the third amended and supplemental bill of complaint filed in the above-entitled suit this court has no jurisdiction of the matters and things in the alleged cause of action in said third amended and supplemental bill of complaint stated"—the following questions of law arose upon the face of said third amended and supplemental bill and upon said motion, and the same were considered and decided by the said circuit court, viz:

I.

Whether or not upon the facts, matters, and things stated and alleged in said third amended and supplemental bill, and by said motion admitted to be true in so far as the same are well pleaded in said bill, it appeared to the satisfaction of the said circuit court that this suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of this the said circuit court, and upon that question the said circuit court held and decided that it did appear to the satisfaction of the said court that the facts, matters, and things stated and alleged in said third amended and supplemental bill do not really and substantially involve
100 a dispute or controversy properly within the jurisdiction of said circuit court within the meaning of the provisions of section 5 of the act of March 3, 1875 (18 Stat., 472). The said circuit court therefore sustained said motion for want of jurisdiction to entertain this suit and ordered and decreed the suit to be dismissed for want of jurisdiction.

II.

Upon consideration of said motion by the said circuit court the following questions arose upon the face of said third amended and supplemental bill and upon said motion, namely: Whether or not upon the facts, matters, and things stated and alleged in said third amended and supplemental bill, and admitted by the said motion to be true in so far as the same are well pleaded in said bill, the said circuit court has or had jurisdiction to inquire into the jurisdiction of the superior court of the city and county of San Francisco, State of California, to adjudge, as it did, as appears by said bill, that the defendant Florence Blythe Hinckley, who was, as appears by the bill, a native-born subject of Victoria, Queen of Great Britain and Ireland, and who was the illegitimate child of an unmarried woman, and who was never in the United States until after the death of said Thomas H. Blythe and descent cast, and who was ineligible to become a citizen of the United States until after the death of the said Thomas H. Blythe, was, by the said Thomas H. Blythe, lawfully adopted as his daughter or lawfully instituted as his heir-at-law under the laws of the State of California, and to adjudge, as said superior court did,
101 as appears by said bill, that the said Florence Blythe Hinckley was and is the sole heir-at-law of the said Thomas H. Blythe and as such heir entitled to inherit from said Thomas H. Blythe the real estate in controversy in this suit and to have the same distributed to her, as was done by the judgment of said superior court, and whether the said circuit court had jurisdiction upon the facts stated and alleged in said third amended and supplemental bill to inquire into the jurisdiction of the supreme court of the State of California to affirm the said judgment of the said superior court awarding and distributing the real estate in controversy to the said Florence Blythe Hinckley as heir-at-law of said Thomas H. Blythe and delivering the possession of said real estate to her, as stated in said bill. Upon those questions the said circuit court held

and decided that it had no jurisdiction to inquire into the jurisdiction of either of said State courts over said subject-matters, and that as to those matters the said judgments of said State courts were and are conclusive against the jurisdiction of said circuit court, and thereupon the said circuit court dismissed this suit for want of jurisdiction.

III.

Upon the consideration of said motion by the said circuit court the question arose whether or not upon the facts, matters, and things stated and alleged in said third amended and supplemental bill and by the motion admitted to be true, in so far as the same are well pleaded in said bill, the said circuit court has or had jurisdiction to inquire into and decide upon the alleged right of the
 102 defendant Florence Blythe Hinckley, at the death of said Thomas H. Blythe and descent cast, to inherit the real estate of said Thomas H. Blythe, to the exclusion of complainants, under and by virtue of the constitution or laws of the State of California, or under the judgments of the courts of California referred to in said bill, anything in the law of nations, the Constitution of the United States, section 10 of article I of said constitution, the 14th amendment thereto, and section 1978 of the Revised Statutes of the United States to the contrary notwithstanding. The said circuit court held and decided that it had no jurisdiction to inquire into or to hear and determine said questions, and ordered the bill dismissed for want of jurisdiction, and decreed accordingly.

IV.

Upon the consideration of said motion by the said circuit court the question arose whether or not, upon the facts, matters, and things stated and alleged in said third amended and supplemental bill, all of which are admitted by the motion to be true in so far as the same are well pleaded in said bill, the said circuit court has or had jurisdiction to entertain said third amended and supplemental bill, and upon said bill to grant any relief to the complainants in this suit. The said circuit court held and decided that it had no jurisdiction to grant any relief to complainants upon the case made in said bill, and thereupon ordered said third amended and supplemental bill to be dismissed for want of jurisdiction, and decreed accordingly.

V.

103 Upon the consideration of said motion by the said circuit court the question arose whether or not, upon the facts, matters, and things stated and alleged in said third amended and supplemental bill, the court has or had jurisdiction to entertain said bill and to hear and determine the dispute or controversy in this suit, founded as it is upon the provisions of section seven hundred and thirty-eight (738) of the Code of Civil Procedure of the State of California. The said court held and decided that it had no jurisdiction to entertain said bill and to hear and determine the matters

in controversy in this suit under and by virtue of the provisions of the said section of said Code of Civil Procedure of the State of California, and ordered the bill to be dismissed for want of jurisdiction, and decreed accordingly.

VI.

The question arose whether this court had jurisdiction to entertain said suit upon the matters and facts alleged in complainants' third amended and supplemental bill, to dispose of the controversy involved under its general powers and under sections 738 and 380 of the Code of Civil Procedure of California relative to actions brought for the purpose of determining adverse claims to real estate. The court decided it had no jurisdiction.

VII.

The question arose whether this court had jurisdiction to entertain said suit, inasmuch as it appears by the allegations of said bill that at the time of the institution of this suit by the filing of complainants' first complaint herein the public administrator of 104 the city and county of San Francisco was in possession of the real estate in controversy. The court decided it had no jurisdiction.

VIII.

The question arose whether this court had jurisdiction to entertain this suit, inasmuch as it appears by the allegations of said bill that subsequent to the institution of this suit and at the time of the filing of said third amended and supplemental bill said Florence Blythe Hinckley, defendant, had become and in fact was in possession of the real estate in controversy. The court decided it had no jurisdiction.

IX.

The question arose whether, upon the allegations of the bill and the construction and application of the Constitution of the United States with respect thereto, this court had jurisdiction to entertain said suit. The court decided it had no jurisdiction.

X.

The question arose, upon the allegations of said bill, whether the State of California has or had jurisdiction to provide for the descent of real estate to an illegitimate, non-resident alien subject of the Kingdom of Great Britain and Ireland, who was at all times until after descent cast outside the territorial limits of the United States, in the absence of a treaty between the United States and said kingdom, enabling such alien to take. The court decided that this court had no jurisdiction.

XI.

105 The question arose, upon the allegations of the said bill, whether sections 671 and 672 of the Civil Code of California, set forth in said bill, as applied to the complainants' claim

and to defendant Florence's alleged adverse and invalid claim, contravene the Constitution of the United States and the statutes and treaties thereof and the treaty power of the United States, and are therefore inoperative and void.

XII.

The question arose, upon the allegations of the said bill, whether the courts of California had jurisdiction to maintain and enforce said sections 671, 672, 230, and 1387 of the Civil Code of California or either of them, set forth in said bill, by adjudging and decreeing said Florence, defendant, who was, as stated in said bill, an illegitimate child of Julia Perry and a non-resident alien, outside the territorial limits of the United States, at all times until after descent cast, to be the legitimate child and heir of said Thomas H. Blythe, a citizen of the United States, and entitled to take by succession, under the intestate laws of California, his real estate here in controversy.

XIII.

The question arose, upon the allegations of the said bill, whether in determining the claim of said Florence Blythe Hinckley, then and there, at the time of the death of said Thomas H. Blythe, a British subject, illegitimate, residing in England, to take the real property of said Thomas H. Blythe by descent, in the absence of a treaty enabling her so to do, the construction and application of the Constitution of the United States were involved.

106

XIV.

The question arose, upon the allegations of the said bill, whether the proceedings in the State courts of California awarding the real estate in controversy to Florence Blythe Hinckley were void for want of jurisdiction in said court to award the property to her, a British subject and a non-resident alien at the time of descent cast, in the absence of a treaty between the United States and England enabling her to take by descent.

XV.

The question arose, upon the allegations of the said bill, whether the proceedings of the State court finding said Florence to be the sole heir of said Thomas H. Blythe, deceased, and entitled to the distribution of his estate, were not void because said Florence was a British subject, illegitimate, residing in England at the time of descent cast, and there was no treaty between the United States and England providing that English subjects might inherit real estate in the United States.

All of the foregoing questions are, and each of them is, hereby certified to the Supreme Court of the United States, pursuant to section 5 of the judiciary act of March 3, 1891.

WM. W. MORROW,

Circuit Judge.

March 2, 1898.

(Endorsed:) Certificate of jurisdictional questions (complainants).
Filed and entered March 2, 1898. Southard Hoffman, clerk, by
W. B. Beazley, deputy clerk.

107 UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, Northern District
of California.

JOHN W. BLYTHE ET AL.	}	Clerk's Office. No. 12144. Præcipe.
vs.		
FLORENCE BLYTHE HINCKLEY.		

To the clerk of said court.

SIR: Please prepare certified transcript of the following pleadings, papers, and proceedings herein, viz: Original complaint, amended complaint, *subpœna ad respondendum*, second amended and supplemental bill in equity, notice of motion of Hinckley to dismiss suit, order dismissing action as to Blythe Co., order amending second amended and supplemental bill and dismissing cause as to Boswell M. Blythe, opinion on Hinckley's motion to dismiss, third amended and supplemental bill in equity, bill of exceptions as to contents of third amended bill, final decree, complainants' assignment of errors and prayer for reversal, complainants' bond on appeal, complainants' petition for allowance of appeal and order, order allowing appeal (minute), order that clerk send certain papers to Supreme Court of the United States, and certificate to jurisdictional questions, the same to constitute the record upon the appeal of complainants herein to the Supreme Court of the United States upon jurisdictional questions.

Dated August 5th, 1898.

S. W. & E. B. HOLLADAY,
Solicitors for Complainants.

(Endorsed:) Filed August 5, 1898. Southard Hoffman, clerk.

108 In the Circuit Court of the United States, Ninth Judicial
Circuit, Northern District of California.

JOHN W. BLYTHE and HENRY T. BLYTHE, Complainants,	}	No. 12144.
vs.		
FLORENCE BLYTHE HINCKLEY, Respondent.		

Certificate to Transcript.

I, Southard Hoffman, clerk of the circuit court of the United States, ninth judicial circuit, northern district of California, do hereby certify the foregoing one hundred and seven pages, numbered from 1 to 107, inclusive, to be a full, true, and correct transcript of the following pleadings, papers, and proceedings in the above-entitled cause, viz: Original complaint, filed December 3, 1895;

amended complaint, filed December 12, 1895; *subpoena ad respondendum*, issued September 16, 1896, and filed October 2, 1896; second amended and supplemental bill in equity, filed January 14, 1897; notion of motion of Hinckley to dismiss suit, filed February 15, 1897; order dismissing action as to the Blythe Company, signed, filed, and entered February 26, 1897; order amending second amended and supplemental bill and dismissing cause as to Boswell M. Blythe, signed and filed June 1st, 1897; opinion on Hinckley's motion to dismiss, filed December 6, 1897; third amended and supplemental bill in equity, filed December 22, 1897; bill of exceptions as to contents of third amended bill, filed December 22, 1897; final decree, signed, filed, and entered December 22, 1897; complainants' petition for allowance of appeal and order, filed March 2, 1898; complainants' assignment of errors and prayer for reversal, filed March 2, 1898; order allowing appeal (minute), entered March 2, 1898; complainants' bond on appeal, filed March 2, 1898; order that clerk send certain papers to Supreme Court of the United States, entered March 2, 1898, and certificate to jurisdictional questions, signed, filed, and entered March 2, 1898, and that the same together constitute the record ordered to be prepared by complainants' solicitors (as indicated in their *præcipe*, a copy of which is included in this transcript) upon the appeal of John W. and Henry T. Blythe, complainants, to the Supreme Court of the United States herein, upon jurisdictional questions.

I further certify that the cost of the foregoing transcript of record is \$65.20, and that said amount was paid by the solicitors for the complainants.

Seal U. S. Circuit Court,
Northern Dist. Cal.

In testimony whereof I have hereunto set my hand and *and* affixed the seal of said circuit court this 9th day of August, A. D. 1898.

SOUTHARD HOFFMAN,
*Clerk of United States Circuit Court,
Northern District of California.*

[Ten-cent U. S. internal-revenue stamp, canceled Aug. 9, 1898, S. H.]

110 UNITED STATES OF AMERICA, ss:

To Florence Blythe Hinckley, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the 26th day of September, A. D. 1898, pursuant to an order allowing appeal made by and entered upon the minutes of the circuit court of the United States of the ninth judicial circuit in and for the northern district of California in that certain suit (numbered 12144) wherein John W. Blythe and Henry T. Blythe are complainants and appellants and you are respondent and appellee, to show cause, if any there be, why the final decree in the said order allowing appeal mentioned

should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable William W. Morrow, United States circuit judge, ninth judicial circuit, and judge of the circuit court of the United States for the northern district of California, this second day of August, A. D. 1898, and of the Independence of the United States the one hundred and twenty-third.

WM. W. MORROW,
Circuit Judge.

111 [Endorsed:] Original. In the Supreme Court of the United States. John W. Blythe and Henry T. Blythe, appellants, vs. Florence Blythe Hinckley, appellee. Citation. Filed August 5th, 1898. Southard Hoffinan, clerk U. S. circuit court, northern district of California.

Service of within citation by copy admitted this 5th day of August, A. D. 1898.

WM. H. H. HART, *
Solicitor for Florence Blythe Hinckley.
AYLETT R. COTTON, *Of Counsel.*

Endorsed on cover: Case No. 16,952. N. California C. C. U. S. Term No., 367. John W. Blythe and Henry T. Blythe, appellants, vs. Florence Blythe Hinckley. Filed August 16th, 1898.